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A HISTORY OF THE TITHE SYSTEM IN
ENGLAND, 1690-1850 WITH SPECIAL
REFERENCE TO STAFFORDSHIRE

by

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Being a Thesis submitted to the University of Warwick
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'The Priest he merry is and blithe
Three Quarters of the Year
But Oh! it cuts him like a scythe
When tithing time draws near

For then the farmers come, jog, jog
Along the miry road
Each heart as heavy as a log
To make their Payments good

Now all unwelcome, at his gates
The clumsy swains alight
With rueful faces and bald pates
He trembles at the sight

And well he may, for well he knows
Each bumpkin of the clan
Instead of paying what he owes
Will cheat him if he can.'

William Cowper

Verses from 'The Yearly Distress, or Tithing Time at Stock in
Essex' (1779) in (ed.) H S Milford: The Poetical Works of
William Cowper (4th ed. 1934).

ABBREVIATIONS

The following abbreviations are used throughout the text:

Agric. H.R.	Agricultural History Review
B.C.	Book of Cases (Friends House)
B.M.	British Museum
B.R.L.	Birmingham Reference Library
B.S.	Book of Sufferings (Friends House)
C.C.F.	Church Commissioners' File (Millbank)
E.H.R.	English Historical Review
Econ. H.R.	Economic History Review
L.J.R.O.	Lichfield Joint Record Office
M.M.S.	Minutes of the Meeting for Sufferings (Friends House)
M.Y.M.	Minutes of the Yearly Meeting (Friends House)
N.R.O.	Northamptonshire Record Office
P.Ps. (H.C.)	Parliamentary Papers, House of Commons
P.Ps. (H.L.)	Parliamentary Papers, House of Lords
P.R.O.	Public Record Office
S.R.O..	Staffordshire Record Office
V.C.H.	Victoria County History
W.S.L.	William Salt Library, Stafford

NOTE ON DATES

Dates before September 1752 have been kept in the Old Style, with the exception that the year is taken to begin on 1 January of a particular year rather than 25 March.

In Chapter VI, the Quaker method of computing dates is preserved. Thus, March was the first month of the Quaker calendar, and February the twelfth, e.g. 2. 7 mo. 1750 would be 2 September 1750.

NOTE ON SPELLING AND PUNCTUATION

The spelling of extracts from source material has been kept in the original with elucidation in parentheses where necessary. Where the sense would otherwise have been obscured, however, punctuation has been simplified and modernized.

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ABSTRACT

This thesis attempts to provide a general history of the tithe system during the last century and a half of its existence in its old form. It attempts this partly through a detailed study of one county, thus enabling a wider variety of legal, administrative, ecclesiastical and parochial documents to be used than has been attempted in previous studies of the tithe system. Staffordshire was selected partly because of its excellent source materials in the Stafford County Record Office, the William Salt Library and the Lichfield Joint Record Office, and partly because the county provides a most useful admixture of different agricultural and industrial settlements. As Caird wrote in 1850:

'The state of agriculture in Staffordshire is influenced by such a variety of circumstances that examples of every system pursued in England may be found in this county.'⁽¹⁾

It was therefore possible to assess whether the tithe system had a differential impact on different types of farming, and how much it penetrated industrial areas. The thesis attempts to show how tithe was collected in the eighteenth and early nineteenth centuries, and how far tithing in kind remained. The importance of lay as well as clerical tithe owners is studied and the thesis attempts to indicate the amount of social tension occasioned by the system.

As litigation over tithe was frequent in much of the period, the

1. James Caird: English Agriculture in 1850-51 (1968 ed.) p. 233.

complexities of the legal situation are studied and an analysis made of the Staffordshire cases, indicating the major reasons for litigation, what evidence was considered valuable, how cases were settled, and the importance of legal costs in the progress and determination of disputes. One particularly lengthy tithe battle - from Cheadle - is treated as a separate case study.

A case study of the Quaker attitude to tithe, as the leading dissenting sect objecting to its payment, is also made, indicating the degree of non-payment by Quakers, their legal tussles, persecution and campaigns to change tithe law. The national campaign against tithe is studied with consideration and evaluation of the arguments of both sides in the light of the actual situation. The reasons for the increasing momentum and bitterness of the campaign from the late eighteenth century onwards are assessed. As the eighteenth century enclosure movement provided the first major opportunity since the Reformation for a change and redistribution of tithe property, attention is paid to the impact of the movement, indicating how far tithe was exchanged for land at enclosure. The relative benefits to land and tithe owner are assessed.

The thesis concentrates finally on the parliamentary attempts to reform the system, and the difficulties encountered there. The origins of the 1836 Commutation Act are studied together with an analysis of the Act and its intentions. The last chapter is devoted to a study of the Act in operation, showing how easily commutation was effected, how tithe values were altered, and how the parties concerned reacted to the changes which commutation would bring. The

thesis ends at 1850 with most commutations, and their attendant redistribution, complete.

Above all, however, this study attempts to explain how men attempted to make an anachronistic system work in an increasingly complex society, how far compromises were necessary and acceptable, and how far tithe was responsible for tension in the village community. It attempts to provide a general history of tithe, but it does so in the belief that, because tithe was a local and parochial burden, its proper impact and effects cannot be properly understood without detailed reference to local situations.

The tithe in its simplest form was a payment of the tenth part of the produce of the land, together with the tenth of livestock nourished by any of that produce. Its origins are obscure, but it is clear that tithe was not merely a Jewish obligation. Tithing was practised in very early pagan communities as a means of supporting the religion of the community, and those who ministered to it⁽¹⁾. The obligation to the payment of tithes in later Christian communities, however, was grounded in references to Mosaic Law. Many eighteenth century defenders of the tithe system referred their opponents to the books of Genesis, Leviticus and Numbers. Those who doubted the historical validity of the tithe system were told to look at Jacob's covenant with God at Bethel, when Jacob promised:

'Then shall the Lord be my God: And this stone which I have set for a pillar shall be God's house: and of all that thou shalt give me, I will surely give the tenth unto thee.'⁽²⁾

God's instructions to Moses and the Israelites were also frequently cited:

'And of all the tithes of the land, whether of the seed of the land or of the fruit of the tree is the Lord's, it is holy unto the Lord. And if a Man will at all redeem ought of his tithes he shall add thereto the fifth part thereof. And con-

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1. John Selden: The History of Tithes, 1618. Chapter II, Section II and Chapter III.
 2. Genesis XXVIII. vv.21-22.

concerning the tithe of the herd, or of the flock, even of whatsoever passeth under the rod the tenth shall be holy to the Lord. He shall not search whether it be good or bad, neither shall he change it and if he change it at all then both it and the change thereof shall be holy; it shall not be redeemed.'⁽¹⁾

There was therefore no difficulty in showing Jewish obligations to the payment of tithes. But however much defenders of the Church Establishment might wish to find them, it could not be denied that the New Testament refused to provide any evidence of payment of tithe by the early Christians. This fact was eagerly used by those who wished to see the tithe abolished. An anonymous pamphleteer, writing in 1830, pointed out the "remarkable fact" that there was not a single New Testament precept authorizing the collection of tithes, and that Christ may have been said to have abolished the obligation when he amended the Levitical law of the Jews⁽²⁾. J S Fry, writing in 1819, had jumped to the conclusion that tithe payment, having only the authority of the Old Testament, was later foisted on Christians by the Roman Catholic Church, having been:

'introduced among Christians by the spirit of anti-Christ.'⁽³⁾

He could also have pointed out that Christ's only recorded reference to tithes was hardly a flattering one.⁽⁴⁾

1. Leviticus XXVII. vv.30-33.

2. Anon. The Claims of the Clergy to Tithes and other Church Revenues Examined. (1830).

3. J S Fry. A Concise History of Tithes in 'The Pamphleteer', Vol. XV (1819). p.409.

4. 'Woe unto you, scribes and Pharisees, hypocrites because you tithe mint and anise and cummin; and have left the weightier things of the law; judgment and mercy and faith.' Matthew XXIII. v.23.

The history of the introduction of tithe to England is similarly obscure. It seems that in the early centuries, tithing was a voluntary custom, which seems not to have been made compulsory until at least the eighth century. Selden noted that legal recognition had been given to tithe by the decree of a synod which had been held under two papal legates in 786 to reform and establish church laws in Mercia and Northumbria.⁽¹⁾ It is by no means certain, however, that tithe payment was enforced by the secular arm as early as this. The treaty made between Edward and Guthrum in 900 included penalties to be levied on those who did not pay their tithes⁽²⁾. The National Synod of the English Church in 944 appears for the first time to have imposed the ultimate ecclesiastical sanction of excommunication on those who refused to pay⁽³⁾. The obligation was clearly established in England well before the Norman Conquest. It seems at first, however, that tithe could be rendered to any cleric of the payer's choice; but the Lateran Council of 1179 firmly prohibited the practice, and enjoined that tithe must usually be paid to the representative of the Church where the payer lived⁽⁴⁾.

A most important practice with regard to the early application of

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1. Selden: op. cit. Chapter VIII section 2. One of the legates had written that he had rehearsed the institutions of Canon Law "de Decimis dandis sicut in Lege scriptum est".
 2. Phillimore: Ecclesiastical Law. 2nd edn. 1895. Vol. I. p.451.
 3. W E Tate: The Parish Chest. (1960). p.134.
 4. For the latest attempt to unravel this tangled skein see G Constable: Monastic Tithes from their origins to the twelfth century. (1964). Especially Chapter I, pp.9-56.

tithe was the so-called 'Three-fold division' of tithes. The tithe payable by the Jews in Old Testament times was put to three uses. Firstly, it was used to support the Priests; secondly for the upkeep of the Temple, and thirdly to provide for the needs of the poor. It seems, despite the obscurity surrounding the whole subject, that the triple division of the tithe revenue was being put into practice; although in some cases the revenue may have been divided yet again in order to give a fourth portion to the Bishop of the diocese⁽¹⁾. How widespread this practice was, it is impossible to say. Certainly a statute of 1391 enacted that monasteries should apply a portion of their tithe revenue to the needs of the poor⁽²⁾; but many of the secular clergy cannot have received sufficiently large tithe revenues to enable them to be similarly beneficent to the poor. In any event, the practice of a triple or quadruple division of tithes had fallen into disuse by the sixteenth century. More important for the purposes of this study, however, later writers, opposed to the tithe system, remembered the theoretical divisions and used them as a stick to beat tithe owners in the eighteenth and early nineteenth centuries. They argued that whatever the scriptural authority in defence of tithes, the present owners had no over-riding right to their tithes, because they were misapplying them. William Cobbett, the ablest of them, told his readers of the threefold division of tithes in the period before the Henrician Reformation:

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1. *ibid.* See also J. Selden: *op. cit.* Chapters VIII to X and W
 . Blackstone: Commentaries on the Laws of England.
 2. 15 Richard II cap. 6.

'As long as the tithes were applied to these purposes there were no poor rates, No Vagrant Act was required; No Church Rates were demanded of the people ... (But now) it is WE, conceited we who are the fools, who let the parsons take all, and who relieve the poor, and build and repair the churches by taxes which we screw from one another, and who, while we have a mutton-bone on our tables, silently see the parsons wallowing in luxury.'⁽¹⁾

Originally, of course, tithe was collected solely by the clergy. Laymen probably first became receivers of tithe as lessees under the ownership of the various monastic orders. Indeed, by the twelfth century with tithe becoming regarded increasingly as a form of property, there are instances of laymen having appropriated tithe to themselves, and enjoying it as freehold⁽²⁾. It has been estimated that about one third of the tithes of England were owned by the monastic orders before the Reformation⁽³⁾. Some houses were very substantial owners and found it essential to lease the greater proportion of their tithe holdings. Laymen were thus very much concerned with tithe collection before the Reformation, and were presumably anxious to collect their dues as strictly as they could in

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1. W Cobbett: Two Penny Trash 1830-32. pp.155-159. For a fuller discussion of the Radical opposition to the tithe system, see below, Chapter VII.
 2. For a good example of this see the letter of Robert, Earl of Leicester to Pope Alexander III in 1168, in G Constable, op. cit. p.110.
 3. E L Cutts: Parish Priests and their People (1914). p.394.

order to make their leases profitable. It was the dissolution of the monasteries, however, which brought into being a large class of lay owners of tithe or lay impropriators. At the dissolution, monastic tithes, along with the rest of their property, were forfeited to the king. In the generation after the dissolution most of these tithes were granted out or sold by the Crown, to favourites, notables and administrators. The tithes thus demised became entirely private property which could be further sold, leased or bought at will. It is usually calculated that something under a third of the tithes of England and Wales came into lay hands in the middle years of the sixteenth century. It was this alienation of monastic tithes which angered Cobbett more than anything else in the history of tithes. He believed that before the Reformation:

'The tithes and offerings and income from real property of the Catholic Church went in great part to feed the hungry, to cloathe the naked, to lodge and feed the stranger ... and the horrid word "pauper" had never been so much as thought of.'⁽¹⁾

In contrast, after the Reformation: "those monstrous things called lay-impropriations" were established:

'giving in many cases, thousands of pounds a year to a layman, who never sees the parish and a few pounds a year to a clergyman who does whatever clerical duty is done in that same parish. The whole affair was a real taking away from the middle and lower class, and a giving to the nobles and the

1. W Cobbett: A History of the Protestant Reformation (1829) Vol. I para. 328.

rich.'⁽¹⁾

Cobbett's analysis, part over-simplification and part pure mythology as it was, nevertheless was to form the vanguard of the radical attack on the tithe system.⁽²⁾

II

Tithes were usually classified in two ways, according to the kind of produce tithable and the value of the tithes. There were three types of tithe classified by produce. So called "Predial" tithes were those which arose directly from the ground - such as corn, hay, wood and fruits. "Mixed" tithe was the tithe which arose from livestock which was nourished by the ground. Included in this category were colts, calves, lambs and wool, milk, eggs and cheese. The third category was the "Personal" tithe which was meant to encompass

'such profits as do arise by the honest labour and industry of man.'⁽³⁾

These could include wages, profits from trade, or any other gain arising out of the skill or craft of man. As the law treatises stated, however, there were certain categories of land which had immemorially been considered exempt from tithe, and on which a land owner could refuse payment⁽⁴⁾. Understandably, lands considered

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1. W Cobbett: A History of the Protestant Reformation. Vol.II. para 8.
 2. See below, Chapter VII, p.277-286
 3. Phillimore: op. cit. p.1484.
 4. See for example: R Burn: Ecclesiastical Law (1767) Vol. III. pp.373-502. H Gwillim: A Collection of Acts & Records Respecting Tithes (1801). F Plowden: The Principles and Law of Tithing (1806).

to be naturally barren were exempt from tithe. Also excluded were lands which had been owned by one of the great monasteries before the Dissolution and which had not paid any tithe at that time. Forest lands in the occupation of the Crown were exempt, although they were tithable when the Crown granted them in fee at any time. Glebe lands in the occupation of the parson were exempt also; and an ancient prescription against payment of tithe was always assumed when no record could be found of tithes ever having been paid on land owned either by a cleric or ecclesiastical corporation or by the Crown. By an important statute of 1549⁽¹⁾, the exemptions were further widened by the inclusion of hitherto barren heath or waste ground which was taken into cultivation. Such land was to be exempt from tithe for seven years after the commencement of improvement in order to provide an incentive for certain owners or occupiers to invest the necessary capital to get the soil in good heart. The most important exemption which was claimed, however, was that of a small customary payment or "Modus" in lieu of either all the tithes of a particular area, or in lieu of a particular crop or flock⁽²⁾. This money payment was always considerably below the value of the tithe.

On lands which were tithable, the three categories of tithe listed above were sufficient for an economy based almost exclusively on agriculture. The great majority of a man's produce would appear

1. 2 & 3 Edward VI cap. 13.

2. See below, Chapter II, pp. 53-59.

in the fields in the form of crops and livestock, and would be easily identifiable. As Christopher Hill has shown, however, the commercial and industrial changes of the sixteenth century placed a great strain on the identification of the third category of tithe - the personal tithe⁽¹⁾. It could be argued that profits from trade, commerce and industry should be assessed to personal tithe; but the problems involved in isolating and assessing a merchant's profits, for example, were formidable, especially when, as was usually the case, the tithe owner was hindered from discovering the true amounts involved. Furthermore, the profits from new iron mills, fulling mills, copper and tin mines were declared in 1549⁽²⁾ to be exempt from tithe unless customary usage of forty years payment of the tithe could be shown. Subject to a similar proviso were the tithes due from the particular skills of men, and the catches of fishermen. Mr Hill has seen this statute as "disastrous for the church"⁽³⁾ in that for the first time the absolute right of the tithe owner to take what he had a right to was circumscribed. In particular, personal tithes were severely hit. There can be no doubt that by the beginning of the period under study, personal tithes were much less widely collected than they had been; and those personal tithes which were still collected were likely to be the bones of much contention, as they often involved making a levy from

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1. J E C Hill: Economic Problems of the Church (1956) Chapter V, especially pp.86-92.
 2. 2 & 3 Edward VI cap. 13.
 3. J E C Hill: op. cit. p.91

a parish when surrounding areas were exempt. In particular the tithe levied on catches of fish provoked strong hostility, especially in Devon and Cornwall⁽¹⁾. One writer has gone so far as to say that by the beginning of the nineteenth century apart from the tithes of corn mills (which could arguably be regarded as predial tithes anyway⁽²⁾) fish was the only personal tithe being collected⁽³⁾. This contention, however, is difficult to support. Vestiges of the old system do linger in certain parishes, although sometimes hardly recognisable in their later forms. Although it is perfectly true that most places make no mention of personal tithes, a study of the Glebe Terriers of Staffordshire parishes in the Diocese of Lichfield and Coventry show some interesting variations. At Abbot's Bromley and Uttoxeter, customary payments for skills are listed as being due:

'Any person that hath any trade, science, calling payes for it 4d. per year.'⁽⁴⁾

Similarly, personal tithes on servants' wages are noted as being payable in five parishes: Chebsey, Trysull, Wednesbury, Wolstanton and Wombourne. The following payment at Wombourne is typical:

'A man servant taking 40s. Wages: 6d.

Under Forty shillings 4d.'⁽⁵⁾

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1. See below, Chapter VII, pp. 258-263.
 2. See the legal decision: Gaches v. Haynes. Gwillim op. cit. Vol. III, p.1256.
 3. P W Millard. The Law of Tithe Rentcharge, 2nd ed. 1926.
 4. Lichfield Joint Record Office. B/V/6: Abbots Bromley 1714. The same payment is noted for Uttoxeter throughout the eighteenth century. For a fuller discussion of the significance of the evidence of Glebe Terriers, see Chapter II, pp. 32-37.
 5. L.J.R.O.: B/V/6 Wombourne 1732. A terrier in the Lichfield series is identified by the name of the parish and date of compilation.

The Vicar of Wombourne in the 1730's, Cornelius Jesson, was also one of the few Staffordshire incumbents to attempt to obtain a personal tithe from the expanding industrial concerns in his parish. His terrier for 1732 listed payment of 3s.4d. for the Heath Forge and 2s. 4d. for Swindon Forge, in lieu of their profits. Also, a "Hammerman" was liable to pay sixpence a year as tithe on his skill. As late as 1839, when the Vicar of Uttoxeter was calculating his revenue for the purpose of effecting a commutation of the tithes, he estimated that most of his tithe income was derived from personal tithes, or the small customary payments which the terrier mentioned⁽¹⁾.

These payments in lieu of personal tithe were, of course, very much the exception rather than the rule. There can be no quarrel with the general argument that within a changing economic and industrial framework, personal tithes were an anachronism which in most places were disregarded. Even where collected, it seems that they represented only a minute fraction of the theoretical value of the impost.

III

Tithes were also divided into "Great" and "Small", originally according to value. In their earliest form, there was no need to divide them at all, as there would be only one recipient. Mr Easterby dated the origins of different types of parish living to

1. Report on Voluntary Agreement in P.R.O.: I.R.18/9528.

the early years of the thirteenth century, when the Abbots appointed deputies or 'Vicarii' to discharge the duties of the parish⁽¹⁾. For this they were to be paid a portion of the tithe directly by the farmers of the land. The statute of 1391 regulated the practice, and enjoined that when a religious house appropriated parish livings, provision was to be made out of the tithes for the vicar as well as the poor.

From the kinds of tithe thus granted, the division of tithes into Great and Small may be dated. As a general rule the Appropriator (or clerical owner of a rectory) or Impropiator (the lay owner) would keep for their own use the most valuable tithes, which were in almost every case those of corn, hay and wood, and grant the remainder - the so-called small tithes - to the vicar. Thus the vicar generally had to make do with the tithes of wool, livestock and the Easter Offerings, which were usually at once less valuable and more difficult to assess and collect. Which tithes were actually payable to whom when both appropriator, or impropiator and incumbent had a claim could originally be determined by reference to the endowment of the vicarage. Later, customary practice was taken as the rule, more or less interpreting the dictates of the original endowment.

It should not be thought, therefore, that the division of tithes into Great (corn, hay and wood) and Small (the remainder) was fixed and unalterable. Burn reminded his readers in the eighteenth

L. W Easterby: The History of the Law of Tithes in England
(Cambridge 1888) pp:26-27.

century that the division could be altered in three ways⁽¹⁾. Customary usage could make wood into a small tithe if the vicar had been used to collecting it without contrary claim by the impropriator. It had also been held that a small tithe could become great if the main produce of the parish was what would normally have been collected as small tithe. The assertion was in dispute in the mid-eighteenth century, however, after a ruling by Lord Chief Justice Hardwicke that potatoes grown in the open fields in large quantities were still small tithes⁽²⁾. Thirdly, tithes could be either great or small depending on the place where the produce was grown. This was a matter of great concern in Kent especially for it was held that the very valuable crops of hops were titheable to the owner of the great tithes if sown in the fields; but they were titheable to the vicar if grown in gardens.

A study of the Glebe Terriers of Staffordshire parishes further indicates that the division of tithes into great and small was not by any means precise. There are 131 parishes in Staffordshire whose glebe terriers survive in sufficient numbers to be useful as a series. Of these 42 were rectories at the end of the seventeenth century, and their incumbents were entitled to all the tithes in the parish. 34 were vicarages, where the tithes would be divided; and the remaining 55 were Perpetual Curacies, whose chief characteristic was, as Dr Best reminds us, that their

1. R Burn: op. cit. p.409.

2. Smith v. Wyatt. In Gwillim, op. cit. Vol. II, p.777.

'Small ... as well as great ... tithes were completely appropriated ... and the incumbent was completely supported by a fixed money payment or "pension" paid to him by the impropriator.'⁽¹⁾

In this series of terriers there is a considerable difference in the ways in which great and small tithes were regarded. It was by no means the invariable practice for vicars to collect only those tithes usually regarded as small. The greatest divergence from what has been regarded as normal was in the collection of hay. Of the 34 vicarages in this study, 23 indicate definitely in the terriers that tithe hay, or a modus in lieu of tithe hay, is collected by right by the vicar, not the impropriator. It must be assumed, therefore, although none of the terriers explicitly say so, that in many cases the vicar enjoyed the tithe through a perpetual grant of the lay owner of tithes which does not survive. On the other hand, many of the terriers speak of tithe hay as if it were a small tithe enjoyed by right by the vicar without any grant for the purpose. The Vicar of Mayfield in 1701, for example, indicated that his profits consisted of

'The Tyth of Hay ... and all other small Tythes and Surplice Fees.'

Similarly, tithe corn, the most valuable tithe of all, was not exclusively collected by the lay impropriator or rector. It was

1. G.F.A. Best. Temporal Pillars 1964. p.17.

quite common for the tithe corn of one part of the parish to be collected by the vicar as part of his dues, again probably originally by grant of the impropriator. The Hanbury terrier of 1718 noted:

'All tythe corne in the Parish belonging unto the Rectory is gathered in kind, or compounded for, except Newborough and Agarsely Park which belong to the Vicar which is gathered by him.'

Similarly at Ilam the vicar collected

'All maner of tyths as well as corne, hay, wooll, lamb and allso all other small tyths and duties within the Lordship of Throwley being part of the parish of Ilam aforesaid.'⁽¹⁾

The Vicar of Sandon complained in 1698 that his right to tithe of corn was being jeopardised by the impropriator:

'Whereas the Ancient Terrier mentions the 3rd. part of the Corn to be due to the Vicar without any exception, the Impro-priator lays a claim to all 3 parts, beyond a brook called Hardewick which is said to be the best corn part of the parish.'

Many perpetual curacies, although presumably not originally financed by tithes, were considerably concerned in their collection by the beginning of the period. The Rector of Stoke-on-Trent, for example, had since the seventeenth century allowed the various curacies under his patronage to collect both great and small tithes for their own use. Thus at Burslem the 1701 terrier states:

'The Rector of Stoke-on-Trent and his predecessors to whom the Cure or Chappellry of Burslem belongs has ... given and

1. L.J.R.O.: B/V/6. Ilam 1698.

allowed unto the Curate of Burslem all the Tyths in kind of Corne, Grain, Hemp, Flax^A, Wooll, Lamb pigs and geese annually arising within the liberties of the said Township and Chappeltry of Burslem aforesaid together with the Easter Roll and Surplice Fees, as also the Modus paid in lieu of Tythe Hay.'

The same policy applied to the curacies of Newcastle-under-Lyme, Whitmore and Norton-in-the-Moors, and when these became separate rectories by Act of Parliament in 1807⁽¹⁾ it can have made little difference to their financial arrangements.

It was perhaps more common for the impropiator to grant to a curacy some part of either great or small tithes instead of a fixed money payment. Such an arrangement was followed at Maer (1698):

'There was ... given by Mrs. Elizabeth Ashe late deceased all the Tithe Corn of the said Parish except the Tythes of Sidway Hall demean, the Tythes of one Tenemt. in Mearway Lane now in the holding of John Weatherby & the tythes of 2 cottages in Sidway Lane and in the holding of Thomas Pickin, the other in the holding of Robert Shelley. As for the smal Tythes, the said Patroness lets them out at a settled Rent and reserves them to her own use.'

No fewer than 14 of the perpetual curacies seem to have ^{but} supported by grants of tithe made by the impropiator. It may well be that this method of support was the more popular because the impropiator

1. By 47 Geo. III cap. 114.

wished to avoid the trouble and expense of collecting what was often a variable revenue when he was obliged to make a payment anyway. Other impropriators, however, preferred to retain a fixed money payment which each year was taken out of the revenue from tithes. In seven instances, however, curates appear to be taking small tithes in exactly the same way as a vicar would, without any acknowledgement that these tithes had been granted by a rector or lay impropriator⁽¹⁾. Thus at Butterton:

'The Tithes in kind are these, Wool and Lamb due to the Curate at St. Barnabas Day ... Tith hemp and flax at their season: Tith geese at Michaelmas: And tith eggs on Good Friday.'⁽²⁾

It is clear, therefore, that we should not take too seriously the divisions of tithes into great and small according to who collected them. Indeed the very division is misleading. It was by no means uncommon for vicars to be collecting part of the valuable corn tithes, while in Staffordshire at least, more vicars were collecting tithe hay than lay impropriators. Certain perpetual curates also were relying on tithes for the major portion of their income. Much more important than such arbitrary divisions was the evidence of the "custom of the parish". On this point, as on most others concerned with tithe at the parish level, the customary mode of proceeding was the practice usually adhered to, in default for example of the original endowment or other relevant ancient document. The evidence of the oldest inhabitants of a parish concerning the

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1. At Barlaston, Betley, Butterton, Cheddleton, Keele, Patshull and Weston-upon-Trent.
 2. L.J.R.O.: B/V/6. Butterton 1698.

way in which tithes had been paid, or to whom they fell due was of more importance than the abstract theory of a legal textbook, as some of the legal works themselves admitted.⁽¹⁾ The terrier of Audley for 1698 shows the importance of custom in beginning its section on tithes with an appeal to it:

'The rate and manner of tything between the Vicar and the Parishoners of Audley ... hath been the use and custom of the said Parish for a great number of years, as the Parishoners affirm.'

I It was the dependence of all parties on "the use and custom of the parish" which was to cause a great deal of trouble over tithes in the eighteenth and early nineteenth centuries . The law of the land deferred to the custom of a parish. This custom, however, was often confused and difficult to elicit with any certainty. It is not surprising therefore that the tithe system should be the subject of so much contentious litigation, for there were disputes not only about whether a tithe should be paid to a vicar or lay impropriator but also whether a tithe was due to be paid at all, or if payable exactly how it should be rendered or set out. At the outset it should be realised that on many points the law of tithes was not cut and dried, but allowed of many different interpretations, depending on the tithe history of the parish. A meaningful history of the tithe system must therefore be involved in a large part with the situation at the parish level. Only by a study of these often

1. See Below: Chapter III pp.72.

widely differing parts can the complex whole be understood.

CHAPTER II: Tithe Ownership and the Mechanism of Tithe Collection
in Staffordshire

I

A correspondent to the Farmer's Magazine in 1800 noted that in Staffordshire the majority of tithes were in lay hands, and had been so since the Reformation⁽¹⁾. Tithe ownership by laymen, as has been pointed out⁽²⁾ became an important factor in the generation after the Reformation when tithes previously held by the monasteries were granted out by the Crown. After this period, it became impossible for laymen to buy tithes which belonged to the Church⁽³⁾. The Deans and Chapter of large cathedrals, no less than the humble Vicars of small parishes, were not able to sell their tithes, as they could be said to own the freehold merely in trust for the Church. It can be stated, therefore, that although the records of tithe ownership throughout the period are deficient, the ratio of lay to clerical owners remained virtually constant. It is possible to arrive at this ratio by reference to the Tithe Apportionments which were made under the provisions of the Tithe Commutation Act of 1836.⁽⁴⁾ From these Apportionments it may be seen that clerical appropriators and parochial incumbents received, very roughly, 7 parts of tithe to every 2 owned by lay impropiators. At first sight, therefore, it does not appear that the correspondent to the Farmer's Magazine had

1. Farmer's Magazine Vol. I, 1800. p.486.

2. See above, Chapter I, p.5.

3. Except, very rarely, by obtaining a private Act of Parliament. Stoke on Trent provides the only Staffordshire example of this. See below p. 29-30.

4. 6 & 7 Wil. IV cap. 71. See also Chapter X, p.363 and Appendix IX.

a perfect appreciation of the realities of tithe ownership in the county. Three factors should, however, be borne in mind. Firstly, a small percentage of the total tithe - lay and clerical - had already been exonerated by 1836 under the provision of certain Acts of Enclosure affecting parishes within the county⁽¹⁾. More importantly, the totals of tithe commuted under the 1836 Act understate the amount of tithe in lay hands, in that they do not mention the fact that lay (but not clerical) tithe owners who also owned the land on which tithe was levied, were enabled to exonerate their tithe by merging the impost with the land⁽²⁾. Roughly one sixth of all the tithe which would otherwise have been apportioned was merged in this way, all of it, of course, in lay hands. Thirdly, although rather more than a quarter of all tithe was owned by clerical appropriators in their positions as prebendaries and canons, it was the almost invariable rule of appropriators to lease their tithes to laymen who then became responsible for collection. Thus, the Dean and Chapter of Lichfield, owning all the tithes of the parish of Cannock, never received them, but farmed them out on twenty-one year leases to influential landowners in the area⁽³⁾. A fine was levied on renewal and the Dean and Chapter took no part in tithe collection. To the parishioners of Cannock, as in many other Staffordshire parishes, therefore, the tithes were in lay hands and collected as if impropriate. To lessee, as well as lessor, the whole matter was a business transaction, far removed from the original

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1. See below, Chapter VIII, p.296-7 and Appendix VII A and B.
 2. See below, Chapter X, pp. 364-367.
 3. S.R.O.: D260/M/T/4/50,90 and 106.

uses to which tithe was supposed to have been put.

Striking evidence of the prevalence of lay and appropriate ownership - which in many cases amounted to virtually the same thing - in Staffordshire on the eve of tithe commutation is presented by the returns to the articles of Enquiry on Ecclesiastical Revenue in 1832. This Enquiry, which furnished much useful information in the campaign of what Dr Best calls the 'third church reform movement'⁽¹⁾, was addressed to the incumbent of every living in the county and requested him to supply details of all the sources of his revenue. From the 187 replies sent in from Staffordshire it may be seen that in only 41 cases was the incumbent in receipt of all the available tithes. 51 incumbents were receiving a portion of the tithes, generally approximating to the ancient division of small tithes and sometimes the tithes of hay. 95 livings, however, were not financed by any tithes at all, except in a few cases of a fixed stipend from a lay impropriator out of the tithes, which cannot in the ordinary sense be called tithe revenue⁽²⁾. Even this may be said to exaggerate the importance of tithes to individual pastoral ministrations in a particular parish. No fewer than 20 of the 41 livings in which all tithes were collected were held in plurality. In some instances, the plurality was not outrageous. Rev Edward Cooper who held the Rectories of Yoxall and its neighbour Hamstall Ridware two miles to the West, was easily able to discharge the duties of both livings,

1. G.F.A. Best. Temporal Pillars (1964) p.239.

2. Church Commissioners File (C.C.F.), Millbank, London SW1.
Staffordshire replies are catalogued as NB20/1 - 461.

for the very comfortable net income of about £775 a year⁽¹⁾. The Bishop of Oxford, however, at this time a member of the Bagot family, can have had but little pastoral oversight of the two Staffordshire rectories of Blithfield and Leigh, which brought him over £1000 a year, the more so as he was also holding the Deanery of Canterbury⁽²⁾. Nor can it be argued that the 20 instances of plurality were necessitated by a need to keep body and soul together, as was so often the case in the depressed Curacies subsisting on miserly grants or the generosity of a Patron. Staffordshire rectors were comfortably off with one living. Much of the tithe held by parochial incumbents, therefore, was not being put to its presumed original use, but was swelling already ample incomes.

It must be remembered, of course, that among the 95 livings not supported by any tithe there were a fair sprinkling of newly endowed livings which represented the Established Church's attempts to minister to the rapidly expanding industrial areas of South West and North Staffordshire. Only rarely were tithes alienated from their owners to finance new livings in industrial areas. The tithes of the parish of Wolverhampton which were owned by the Duke of Cleveland and Lord Hatherton among others, and were together worth over £4250 at Commutation⁽³⁾ were all in lay hands. Meanwhile, the Perpetual Curate of Bilston, Horatio Fletcher, reported that all of his meagre income of £90-£95 a year, came from the renting of pews. If all the

1. C.C.F. NB20/159 and 461.
 2. *ibid.* NB20/38 and 206.
 3. See Appendix IX.

pews could be let, then his income would rise to £220, but 'the oppressed state of trade in this district' persuaded many of his parishioners to suffer the indignity of sitting in the free places⁽¹⁾. Most of his colleagues as Curates in the Wolverhampton district faced a similar situation. They relied on Pew Rents and 'Surplice Fees' for burial, marriage, weddings and churchings. These last could at least be valuable in populous districts. Thomas Walker, Curate of St Peter's Wolverhampton, estimated that he received £115 a year from them⁽²⁾. Tithe, however, formed no part of their income. The industrial expansion of the early nineteenth century made tithes relatively less important for parochial incumbents in that newly endowed livings generally had to make do without them. In the countryside, however, Rectories and Vicarages were still dependent on tithe for most of their income⁽³⁾. Their other important source was the rental of glebe lands. The amount of glebe attached to each living varied, and does not form a part of this study. Two factors which became important in the eighteenth century should, however, be noted. Firstly, 94 livings were augmented in value by grants from Queen Anne's Bounty which were generally laid out in the purchase of land for the use of the Incumbent⁽⁴⁾. Although most of the livings so augmented were perpetual curacies, many of whom did not collect tithes, 13 Vicarages and two rectories - Weston under Lizard and

1. C.C.F.: NB20/34.

2. *ibid.* NB20/452.

3. See Appendix II.

4. Parliamentary Papers (P.P's): 1814-15. Vol. XII, pp.381-525. For a general study of the operation of Queen Anne's Bounty see A. Savidge: The Foundation and Early Years of Queen Anne's Bounty 1955, *passim*, and Best: *op. cit.* especially Chapters I, III and IV.

Gratwich - were augmented between 1715 and 1815. The other factor which altered the balance between revenue from tithe and glebe was the Enclosure movement⁽¹⁾. When exoneration of tithe accompanied enclosure proceedings, the Incumbent was given a large slice of land in lieu of tithes, which he then usually rented out. Henceforward he became a substantial landowner rather than a tithe collector. As shown below, this factor was generally of less importance in Staffordshire than in neighbouring areas - notably Warwickshire - but it should not be forgotten in any discussion of the importance of tithe in the total revenue of parochial incumbents.

Lay improPRIATORS could hardly regard the tithes they owned in any sense other than as pieces of property to be exploited for their rental value in the same way as land. It is true that many of them felt obliged to provide some sort of stipend for the livings on which the tithes were levied. Indeed, many of them were also patrons of the living. The Curate of Burton-on-Trent noted in 1699:

'That the Tithes of this Parish doe belong to the Right Honourable the Lord Pagott (Paget) and that he provides a Curate who officiates as parson of this Parish and that the said Lord Pagett allows him £35 per annum and the Easter Roll and Surplice Fees.'⁽²⁾

This practice was kept up by Paget's successors in the eighteenth and early nineteenth centuries, the Earl of Uxbridge and the Marquis of Anglesey⁽³⁾. Such obligations, however, became traditional and

1. For a fuller discussion of tithes and the Enclosure movement, see below, Chapter VIII. pp. 294-320.
 2. L.J.R.O.: B/V/6: Burton on Trent 1699.
 3. See, for example, C.C.F. NB/2/65.

rarely kept pace with the value of money. The impropriators of Rocester paid the curate of the Parish only £5 or sometimes 5 marks, throughout the early part of the eighteenth century until the curate noted in 1755 that even this small payment 'has of late been discontinued'. The terrier of 1770 states that the impropriator, George Hunt, had also laid claim to the small tithes of the Parish⁽¹⁾. It seems that he was successful because the curate of Rocester noted in 1832 that he was unable to obtain any small tithe payments⁽²⁾. Nor were any apportioned to the living when the tithes were commuted in 1848⁽³⁾.

Lay impropriators were traditionally men of means and substance, and this remained true for most impropriators throughout the period. Lay tithes could be bought and sold in the same way as any other species of property, but many tithes in Staffordshire remained in the same families throughout or were only transferred to larger estates as part of a dowry. It was usual for influential county families to hold the improprate tithes of the area around their residences. The Sneyd family, for example, held the improprate tithes of the parishes of Keele and Wolstanton, in North-West Staffordshire, throughout the period. This they combined, as is often found, with the Lordship of both manors and the patronage of the two livings⁽⁴⁾. Similar domination was enjoyed by the Elde

1. L.J.R.O.: B/V/6: Rocester 1755 and 1770.

2. C.C.F.: NB20/294.

3. P.R.O.: I.R.29/32/180.

4. L.J.R.O.: B/V/6: Keele and Wolstanton, passim, and A/V/1/2, 1830. pp.80 and 138.

family in Seighford. The usual pattern was for the tithe owner also to be the dominant landowner. This was the case with both the Sneyds and the Eldes, and was the prime motive behind the purchase of the tithes of Farley and Cotton in Alton parish by Charles Bill in 1761⁽¹⁾. Bill had hoped to consolidate his position in the parish, and also to let certain lands which he owned tithe-free, an attractive prospect for many farmers, and for him as he could charge a higher rent. Bill's purchase, however, proved to be at best a mixed blessing because it brought him into conflict with the other substantial landowner in the area, the Earl of Shrewsbury, who refused to pay tithes from a large part of his own land, and had sufficient resources to compel Bill to compromise with him⁽²⁾.

The largest landowners in the area do not, however, dominate tithe ownership throughout Staffordshire. They retain fairly well defined spheres of influence. The most important of them were the Leveson Gowers⁽³⁾ and Lord Hatherton. At the end of the eighteenth century, the first Marquis of Stafford, Granville Leveson Gower, owned the tithes of the parishes of Trentham, Barlaston and Stone together with part of Godsall. Lord Hatherton owned the remainder of Godsall and all of Gailey, Penkridge, Walsall and Shareshill. Other peers of the realm were dominant tithe owners in one or two parishes only, much like the gentry families: the Earl of Dartmouth in Abbots Bromley and West Bromwich, the Earl of Harrowby in Sandon, the Earl

1. S.R.O.: D554/32 and 42.

2. *ibid.* D554/30 and 36.

3. Granville Leveson Gower was created Marquis of Stafford in 1786, and his son George Granville Leveson Gower became Duke of Sutherland in 1833.

of Lichfield and Duke of Cleveland in Wolverhampton⁽¹⁾. The influence of the aristocracy on tithe ownership in Staffordshire, therefore, was significant but not overwhelming. Clerical appropriators in fact held more great tithes than did the aristocracy, largely due to the influence of diocesan and diaconal holdings from Lichfield. The Dean and Chapter of Lichfield held the largest amount of tithe in Staffordshire being in possession of the great tithes of six wealthy parishes: Brewood, Cannock, Chebsey, Dilhorne, Rugeley and Tatenhill, together with a significant slice of a seventh - Eccleshall. At Commutation these tithes were worth together almost £6500. In addition, the various Prebendaries of the Cathedral Church were in receipt of the great tithes of no fewer than seventeen parishes in Staffordshire⁽²⁾. The Bishop of Lichfield's estates also included the appropriate tithes of Gnosall and Hanbury.

The most significant development in tithe ownership towards the end of the period under study was the increasing tendency for lay impropiators to sell off their tithe holdings to the individual owners of land from which the tithe fell due. A cursory glance at the tithe apportionments of Staffordshire parishes reveals that in

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1. This list has been compiled from a large number of disparate sources, including Estate Papers in the County Record Office at Stafford: D240, D260, D593, D1790 together with Tithe Commutation Apportionments P.R.O.: I.R.29/32/1-244, and Archidiaconal Visitation records: L.J.R.O.: A/V/1/2. Useful for reference, although not completely accurate are the lists of Tithes commuted given in H. Grove: Alienated Tithes (1896).
 2. Adbaston, Alrewas, Armitage, Baswich, Colwich, Eccleshall (part), Hints, Lichfield, St Chad & St Michael; Longdon, Norton Canes, High Offley, Tipton, Weeford, Kings Bromley and Pipe Ridware.

certain tithe districts, such as Alton, Codsall, Kinver, Rocester or Shenstone among others, the owners of small acreages of land are in receipt of the tithes arising from that land, where once all the tithes were in the hands of one or two impropriators. The reason for this was economic. Impropriators were among the first to realise that the actual returns for tithe revenue often did not match up to the theoretical value of the tithe. The means of evasion, concealment, prevarication and downright refusal were legion, and in many cases it was not practicable to chase each defaulting tithe payer, especially if the amounts required were small. As early as 1726 a Staffordshire landowner, concerned in negotiations to buy some tithe in Bushbury was hinting at the difficulties:

'The tyths were set to my grandfather at £18, afterwards advanced to £20 per ann. My father had ym. at £28 at wch. rate (he telling me he got nothing by ym) I would not hold ym. They are now set to a labouring man William Timmins of Essington at 35 or 38 l. per an.: too high, if not for him, for anybody else to get by, Tyths being what no person desires to buy but to free their own estates from lay demands of.'⁽¹⁾

John Tomlinson, attempting with a considerable degree of success to re-impose old tithes on inhabitants in Stoke on Trent, went to the most unusual length of obtaining a private Act of Parliament⁽²⁾ in 1827 to enable him to sell portions of his tithe and glebe, pro-

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1. S.R.O.: D1790 (W)/D/3/2. J Vernon to Mr Kent, 15 Jan. 1726. (Underlining mine).
 2. 7 & 8 Geo. IV c.41.

vided that the revenue so raised was used to improve the rectory and endow new churches in a thriving industrial area. The tithes were sold for £10-£15 per acre, and inhabitants, seeing how successful Tomlinson's attempts at reimposition of tithe had been, seemed eager to buy. It has been estimated that by 1840 a total of £50,000 had been raised by sale of tithe and glebe⁽¹⁾.

The Marquis of Stafford's agent, George Lewis, had the same problem of trying to obtain the true value of the tithes of the parish of Codsall at the beginning of the nineteenth century. He wrote to the Marquis's Commissioner, James Loch, in May 1824:

'I agree with you that tithes are a very unpleasant property for anyone that has to do with them ... I assure you I have got characters to deal with that would object to pay if only half was demanded.'⁽²⁾

A solution to this problem was attempted by many other large impropriators in the 1820's and 1830's. Stafford's agents arranged in 1831 a private sale of individual tithes to the respective owners of the land. Lewis informed Loch:

'I mean to offer the Tithes to the different proprietors of the lands, (and) if they refuse to dispose of them, to anyone else that will purchase. There may be some foolish enough to object but I know that customers will be found for the whole.'⁽³⁾

1. V.C.H. Staffs: Vol. VIII, pp.186-187.

2. S.R.O.: D593/K/1/3/12. Lewis to Loch. 22 May 1824.

3. *ibid.* D593/K/1/3/19. Lewis to Loch. 12 July 1831.

Lewis was too sanguine. He was able to dispose of only $86\frac{3}{4}$ acres of land to 16 owners at a total purchase price of £549.16.0⁽¹⁾. This represented only 10% of Stafford's tithe interest in Codsall. The remaining proprietors were either unable to raise the requisite amounts, or preferred the status quo where they paid rather less than their dues. None the less, between 1797 and 1848 when tithes were commuted, his agents had managed to reduce the Leveson Gower tithe holding in Codsall from 1116 acres to 791⁽²⁾. Such sales, repeated as they were in various parishes during the early nineteenth century, brought a much larger number of tithe owners into being, most of them owning only the tithes of their own lands⁽³⁾.

II

The orthodox and traditional method of taking tithes at the beginning of the period was tithing in kind. Under this system the tithe owner or his appointed deputy was informed by the farmer of crops or livestock when the produce was ready. The tithe owner then went to the field and took the tenth portion of corn or hay, or the tenth cow, sheep or calf as his own property. He was, therefore, co-partner with the farmer, and had a right to a portion of his produce. There was no over-riding custom throughout the country which laid down how tithes should be collected. Common law acknowledged the right of the tithe owner to take his tithes, but it was the custom of the parish which dictated how and in what precise manner tithes

1. *ibid.* D593/T/2/17.

2. *ibid.* D593/T/2/18.

3. For some idea of the extent of these, see Appendix IX.

should be collected. It is in this respect that Glebe Terriers were so important. Terriers have been called 'the parish clergy's title deeds',⁽¹⁾ with a good deal of justification, for they provide, at least from the late seventeenth century, a continuing record of the rights of parochial incumbents in tithe and glebe. Terriers were frequently referred to as the likeliest source of the custom of the parish when tithe disputes occurred, and provided the most important evidence in numerous tithe suits⁽²⁾. It is not surprising that frequent exhortations were given by ecclesiastical dignitaries to parochial clergy to compile their terriers regularly and thus preserve a title to their ancient rights. The following, by Richard Smallbrooke, Bishop of Lichfield and Coventry from 1731 to 1750, is one among many:

'It is visible that in too many livings there is great negligence in making and preserving Terriers. I would quicken your diligence in taking care of those legal securities of the Parochial rights of Ministers and in transmitting them to your successors as the most likely method to preserve inviolably both your Tythes and Glebe.'⁽³⁾

Of course, the tithing customs for each parish differed in certain respects, but the following, from Tixall (Staffs) in 1698 affords a

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1. (Ed.) M Barratt: Ecclesiastical Terriers of Warwickshire Parishes Vol. I. Dugdale Society Publications, Vol. XXII. Introduction p.i. For a fuller discussion of the value of Terriers see my article, 'Tithing Customs and Disputes: The Evidence of Glebe Terriers' in Agricultural History Review, Vol. XVIII, 1970, pp.17-35
 2. See below: Chapters III and IV, esp. pp. 103-104.
 3. R Smallbrooke: Charge to the Diocese of Lichfield & Coventry by the Bishop. (1732-3). W.S.L. (Pamphlets): Visitation Charges: Eighteenth Century.

good example of the way in which tithe rights were listed:

'The Tyths & offerings due to the Parsonage are as follows:
Every House for the Garden and Smoake pays Two Pence. When there are Seaven or ten Cows belonging to a family which hath within one year seaven or ten Calves, one is due. Every Cow & Calf pays one penny halfpenny, every barren cow pays one penny. Every Mare & Colt pays two pence. When there belongs to any house Seaven sheep one fleece is due if ten one fleece, if Seaventeen one fleece, if twenty, two fleeces are due ... for every sheep that is under seaven & above ten that amounts not to a tyth fleece, for every such fleece is due a penny. If they winter there (sic) sheep till Candlemas & then sell them off Halfe Tythe is due as is for Cows above mentioned. If any one living out of the parish send sheep into this Parish to be winter'd, Halfe Tythe is due. The tythe lamb is due as the wool is, Except every odd lamb under seaven or above ten ... one halfpenny. Geese are also tythed after the same manner. Tyth piggs are paid at Seaven or ten and so upward; as in other things above mentioned. Hemp & Flax is pd. every tenth bound, if taken green, And the eleventh if watered. Every acre of Hemp or Flax sown four shillings, according to the Act of Parliament⁽¹⁾. Tyth honey is paid at every seaven or ten pints or quarts ... Eggs are paid for every Cock two Eggs, and for every Hen one egg. Apples are tyth'd at Seaven or ten in

1. An Act of Parliament in 1691 (3 Wil. III cap. 3) which was enlarged and extended by 11 & 12 Wil. III cap. 16, 1699 to protect the cultivation of Hemp and Flax.

'number or measure.

The whole Parish pays all manner of tyth in kind Except only ... the Astons Demesnes, for which he pays ten pounds per annum to the Rector. The one half at Michaelmas and the other half at Lady Day being a Rate Tyth for & in lieu of all dues & Tyths arising from out of the said Demesne Lands ... '(1)

The custom of taking a tithe animal at the seventh instead of the tenth and making a small allowance for the remainder, is very common, enabling the incumbent to get something like his full due from the small farmer with limited stock. In the theoretical model, nothing would fall due until the tenth. In some terriers, as in the following from Pattingham, the actual method of choosing the tithe is set out:

'The custom of tithing lambs is this, the owners first chuse two & then the Vicar takes his tith & then the owner takes out seven more to make them ten & so on till all are tithed. If there be seven od ones ... the Vicar has one ordinarily allowing 3d. a lamb for those which make up ten. But if there be six od ones or a lesser number, the Vicar takes either 3d. a lamb or reserves them for the increase of the insuing year.' (2)

Such customs were common; but there were those which were unique to a particular parish or township. At Alton it was noticed:

'The Town of Ramshorn pays to the Vicar of Alveton a modus one stone of wool & one lamb at Midsummer for which the Vicar

1. L.J.R.O.: B/V/6: Tixall 1698.
2. ibid. : Pattingham 1698.

'pays them in the middle of the town street (if demanded) one
Gallon of Ale.'⁽¹⁾

Some terriers also indicate the way in which the tithe of Corn - usually the most valuable tithe - should be set out. A distinction was usually made between Corn which was ready bound up for the tithe owner to collect and that which was left in the field for him to collect as best he may. At Norton-in-the-Moors, the curate stated:

'Tithe Corne is either gathered att the Eleventh Mote or Shock when bound & set up by the Parishoners: Or at the tenth shock when the Parishoners refuse to set it up.'⁽²⁾

At Kingsley the custom of the parish was adapted to suit its geographical situation. Kingsley, three miles north of Cheadle, is divided into two parts by the River Churnet which flows through a very narrow, steep valley. The Rector of Kingsley, whose residence was on the south side of the river had obviously considered the task of transporting tithe corn down the valley and across the river unprofitable considering the small amount of corn collected from a predominantly grazing area, and a compromise was reached:

'Uppon the North side of the water of the parish of Kingsley, All the Corne is tythed in kind, yet it is to be gathered and housed by the particular owners of the same; for which they have Strawe and Chaff findinge also a thresher.'⁽³⁾

Certain terriers also contained a statement of the right of incumbents to view the tithe and take their carts and oxen onto farmers' lands

1. L.J.R.O.: B/V/6: Alton 1714.
2. ibid. : Norton-in-the-Moors 1718.
3. ibid. : Kingsley 1698.

in order to collect it, without threat of trespass. It was evidently considered useful to have a formal statement as a safeguard. Thus, the Caverswall terrier concludes:

'It is lawfull for the Vicar ... or his servants or any other person authorized by him to have free ingress, egress and regress into any house, cottage, close, ground etc. at all and every time or times in the year to visne, take or carry away all manner of tythes due ... with any manner of wain, oxen, cart, horses or any other carriage whatsoever, or to order ... cast, dry any Tyth hay or grass in as free and ample manner as the owners or occupiers ... can do for the residue without any let, suit disturbance whatever.'⁽¹⁾

The terrier of Blithfield in 1741 included a detailed itinerary to be followed by tithe collectors in their journeys around the parish, again sanctioning and formalizing the "custom of the parish".

There were lay impropriators who saw the value of making their own terriers of tithe rights to guide their collectors, and also to preserve the custom of the parish. Charles Bill, in compiling a manuscript "Short History of the Tithes of Farley and Cotton" in 1801, implied that he wished the customs to be generally understood by those concerned in tithe collection because:

'The Law says that Tythes are to be set out "according to the custom of every Country"; and there is nothing else to govern it.'⁽²⁾

1. L.J.R.O.: B/V/6: Caverswall 1698.
2. S.R.O.: D554/42.

Similarly a memorandum was prepared in the late eighteenth century to inform the lessee of tithe in Hopton, near Stafford, of the precise way in which cows and hay should be tithed⁽¹⁾.

III

In most parishes, therefore, there was a record of how tithes should be collected. Such records, however, became increasingly theoretical during the period under study. The County Reviewers of the Board of Agriculture between 1793 and 1815 frequently remarked that little tithe was being taken in kind⁽²⁾, especially in the Midland counties where William Marshall a few years previously stated that in the course of his journeys there he had come across only one example of tithing in kind - that of Bosworth Field (Leicestershire)⁽³⁾. The old system seems to have been more generally practised in the extreme North-West, Cumberland and Westmorland; along parts of the South Coast, in Hampshire and Kent; and in East Anglia, especially Cambridgeshire and Suffolk⁽⁴⁾. It seems fair to state, however, that by this time it was everywhere in decline.

It is not difficult to discover reasons why this should have been so. Both to tithe owner and tithe payer, the system was fraught

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1. S.R.C.: D240/M/C/D.
 2. See, for example, Robert Lowe: A General View of the Agriculture of Nottinghamshire (1794), Stone's Bedfordshire (1794), Young's Hertfordshire (1804) and Kent's Norfolk (1796).
 3. W Marshall: Rural Economy of the Midland Counties, 2nd ed. 1796. Vol. I, p.18.
 4. Lord Ernle: English Farming, Past and Present, 1961 ed. Appendix V, pp.504-506.

with difficulty. The Vicar of St Mary's Lichfield, compiling a tithe book in 1773, sourly noted:

'As the gathering in kind of wooll and Lamb, of Calf and Milk and seperating (sic) & distinguishing of land agisted or depastured by unprofitable cattle would be attended with endless trouble, as well as continual Quarrels with the persons from whom due, the Vicar in lieu thereof takes a Composition of one shilling and sixpence an acre for all land depastured or grazed without exception.'⁽¹⁾

A tithe payer wrote enviously to a friend in Scotland, where tithes (or "teinds") had been redeemed from the middle of the seventeenth century:

'In many places it is the custom for the tythe-owner to require 24 hours to go and set out the tythes, by which it frequently happens that though a field of corn be perfectly fit for leading and stacking yet the cultivator is prevented from embracing the opportunity - and before the expiration of 24 hours the rain comes; and if a series of wet weather ensues, the crop is very often materially injured ...

Another hardship is that the courts of law have determined that after the crop is tithed and the farmer has taken his part away, the tithe owner may let his share remain in the field, and thereby prevent the owner from turning in any stock to depasture in the field or to plow the land for any other crop

1. L.J.R.O.: Dean & Chapter Muniments. Cupboard 8/6.

'which he might wish to put in immediately ...

Every farmer who knows the value of good fold yard dung as a manure must materially feel the want of one tenth of his produce where tythes are drawn in kind; and where it happens on poor land, the loss is irreparable.'⁽¹⁾

Apart from the acrimony which tithing in kind created, there were other severe disadvantages which might well cause even a cleric who was indifferent to his popularity in the parish to consider an alternative means of getting his dues. Except in a very small and compact parish with few farmers, the procedure of gathering the tithe would be a lengthy one, necessitating the hiring of a full time tithe collector together with several assistants throughout the entire period of the hay and corn harvests, as well as being present at sheep-shearing and all other occasions when tithe might be due. As the onus was on the landowner to tell the tithe owner when the tithe would be ready for collection, it would be extremely difficult to plan a tithing tour around the parish with any accuracy. The problem of the disposal of the tithe when gathered was likewise very real. The tithe owner would have to turn farmer and merchant and join the haggling to get the best price for his produce. Alternatively, he could entrust the task to his tithe-man, and incur extra expense. This problem was, of course, magnified if the parish was at some distance from the nearest market. John Middleton, in reviewing the county of Middlesex for the Board of Agriculture, noted the difficulty of the Vicar of Battersea who attempted to take in

1. Farmer's Magazine, Vol. IV, 1803, pp.72-73.

kind the tithe of garden produce, an experiment he continued for three years:

'during which time nothing was more common than to meet his carts in the streets retailing his tithes with a person in each, vociferating: "Come, buy my Asparagus! Oh, rare Cauliflowers!"⁽¹⁾

It is not surprising that when surveyors were employed to estimate the total value of tithes in a parish if taken in kind, they made large deductions, ranging from 15% to as much as 40% of the total tithable produce purely for the difficulty and expense of collection. A witness before the Select Committee on Agricultural Distress in 1833 stated:

'There is more difficulty in collecting the tithes than in receiving the rest of an estate.'⁽²⁾

Where a tithe owner was confronted with a large parish, of scattered farms at a great distance from the nearest market, served by in-different roads and possibly without a tithe barn on hand to store his produce conveniently, he would expect his collecting expences to be almost prohibitive. John Matthew, carrying out his work of inspecting the agreements for the Commutation of tithes in Hanbury (Staffs) in 1838 deducted from his estimate of the total tithable produce two-sevenths for the collection of the great tithes, and two-fifths for the small⁽³⁾.

1. John Middleton: A General View of the Agriculture of Middlesex, (1798) p.59.
2. P.P.'s (H.C.) 1833: Vol. V, clause 2013 et. seq.
3. P.R.O.: I.R.18/9357 and 9377.

Problems of collection and marketing would occur even when tithe owner and tithe payers were in complete harmony. Tithing in kind, however, was so universally abhorred that parishioners put every obstacle in the way of collectors. To priest and parishioners alike, the remarks of an anonymous defender of the Church Establishment in 1782 that 'the greatest harmony subsists between the incumbent and his parishioners' where tithes have been taken in kind⁽¹⁾ must have seemed no less ludicrous than his conclusion that:

'Were the clergy compelled to take their tithes in kind, the universality of the practice would be very effectual in silencing murmurs and discontent.'

The tithe collector of Jonathan Backhouse, impropiator of tithes in Tamworth, gave evidence in the Lichfield Diocesan Court in 1713 against William Thompson that when he and the impropiator went to tithe the corn:

'Part of the said Beans and pease were bound in Sheaf and set up in Stucks by the Defts. Servants and being so set up the plt. himself came and tyth'd every tenth shuck for himself and told the deft. then in the field what he had don. The deft. thereto replied, "if you wil have the Tenth you shall not have it in shuck" and forthwith went and flung out the tenth in Sheaf even of that which the Plt. had tyth'd before in Shuck and in like manner the deft. caused all the crop in

1. Anon: Observations on the General Commutation of Tithes ... 1782, Goldsmiths Library. University of London. GL 1782.

'that field to be tyth'd in sheaf or bundle without Shucking or rucking as has been usually don in the depon(ent)'s time, wherefore the plaintiff refused to take the Tyth so set out and the Tyth was left in the fields and lost.'⁽¹⁾

Similarly, Francis Ashenhurst, Rector of Kingswinford, in his libel in the Exchequer against Thomas Slater in 1698, testified that Slater:

'Haveing an unconscionable designe to defeat and defraud your Orator of his just rights and dues hath yearly for severall years last past in Corne Harvest tyme, caused his Corne and Graine to be hastily cutt bound up, cocked and carried away in such an unfaire and clandestine manner and in such sort as your Orator Tythingmen could not visne the same nor see whether your Oratr. had his just right.'⁽²⁾

Charles Bill of Alton stated that when tithes were collected in kind from Farley and Cotton the parishioners had insisted on the custom of throwing out every tenth sheaf of corn in order:

'to give as much trouble as they could in collecting the Tythes - perhaps they intended to throw out every 10th. Sheaf as they were reaped in which Case they might have made them as small as they pleased.'⁽³⁾

The attempt to collect tithe in kind from a man who regarded tithingmen coming onto his land as an unwarrantable intrusion of his

1. L.J.R.O.: B/C/5: 1711-2: Tamworth.
 2. P.R.O.: E112/740 No. 78.
 3. S.R.O.: D554/42.

property, could develop rapidly into a war of nerves with the farmer holding many potent weapons. The story is well-known of the Hampshire farmer who insisted on calling out the tithe owner together with his servants, horses and waggons in order to present him with a single turnip, requesting him to return later when he might collect another⁽¹⁾; but farmers who were determined and fertile in expedients could easily devise other obstacles. The Vicar of Ilam (Staffs) attempted to obtain tithe in kind from a recalcitrant farmer named Harris who had refused to pay any dues at all. His attempt to collect the tithe in July 1830 was met by Harris' blocking up the old tithe road, 'the usual and immemorial road of collecting the tithes'⁽²⁾. In August, a further request was met by the farmer waking up the Vicar at 5.30 a.m. with an official notification that the tithe could be drawn⁽³⁾. In the following year, Harris set out some tithe in minute quantities at varying intervals while refusing to give certain other dues at all⁽⁴⁾. When there was a dispute in the parish of Aston (Warwickshire) in 1828 between Richard Fowler, a farmer in the parish, and the Vicar, George Peake, over the liability of milk to be tithed, Fowler quickly devised a means of making tithe collection as difficult as possible. He sent a note to the Vicar:

'To the Revd. George Peake and Mr. Browning his Tithe

Gatherer: Take Notice, I shall from and after this date set

1. Ernle: op. cit. p.341.

2. L.J.R.O.: B/A/19. Mott to Port. 12 July 1830.

3. *ibid.* 3 August 1830.

4. *ibid.* 4 November 1831.

'out tithe Milk as it arises - Counting from this time the first tenth Meal will become due on Friday evening the 12th inst. At 6 o'clock in the evening of that day I shall set it out in a field of land called Bromford Meadow my usual place of milking, and also the following Mornings Meal of Milk Saturday the 13th Inst. at 6 o'clock in the morning and continue to set out every subsequent Evening and Mornings Milk as it becomes due.'⁽¹⁾

Browning would presumably quickly tire of collecting pails of milk in this fashion every tenth day, especially as he would then have to dispose of it before the milk turned sour.

In the previous year, Fowler had worn out Browning and Peake over the collection of potato tithes, which he also disputed. From 5 September to 5 October 1827, Browning made no fewer than 5 trips to Fowler's lands to take small quantities of potato tithe, ranging from 1/4 peck to a whole peck on each occasion. By 11 October, Browning had agreed to take a composition for the remainder of the potato crop⁽²⁾. Thomas Thompson reported another case (not from Staffordshire) in 1777 in which parishioners greatly resented the attempt of their Rector, Dr Bosworth, to impose milk tithe in kind. Parishioners called each tenth day when the Rector claimed his milk "Devil's Day", and an enterprising milkmaid showed her disapproval of the new arrangement by adding urine to the milk before she handed it over to the Rector⁽³⁾.

1. B.R.L.: Jewell Baillie Mss. 77c 1/36.

2. *ibid.* 77c 1/30.

3. Thomas Thompson: 'Tithes Indefensible' (3rd ed. York 1796. p.50).

All of this is not to imply that tithing in kind was unknown in Staffordshire in the latter part of the eighteenth and early nineteenth centuries. It is clear from the account books of Earl Gower that tithe of corn was collected in kind from part of Trentham parish between 1758 and 1773, although Lightwood Forest in the same parish was paying the unvarying rate:

'Wheat at 4s. an aker. Barley 2s6d. Oates 2s.'⁽¹⁾

Roger Kynaston reported to the Tithe Commissioners in 1838 that at Milwich the great tithe owner, Lewis Dive, had taken his dues in kind 'for a long period' before agreement for commutation was signed⁽²⁾. For the reasons above cited, however, these instances were very much the exception. In most parishes, tithing in kind was a last resort when, for example, agreement could not be reached on an acceptable alternative. The tithe owner always retained his right to take tithe in kind, but exercised it as infrequently as possible. In reply to the Articles of Enquiry of 1832 only ten incumbents said that any substantial tithe was taken in kind in their parishes, whether by them or by lay impropriators. Certain other incumbents stated that they took a small quantity of tithe in kind, generally of wool, while receiving money payments for the remainder. The Vicar of St John's Whittington said that he took tithe in kind from one farmer to a total of £15, noting:

'No tithes are taken in kind except where a change of tenancy

1. S.R.O.: D593/G/5/2-4.
2. P.R.O.: I.R.18/9437.

'has happened and the new tenant has not agreed for the first year of his occupation & also a trifling sum taken for wool & lamb upon the commons.'⁽¹⁾

It is significant also that in at least two of the ten places from which a substantial portion (though in no case all) of the tithe was demanded in kind, there was a problem for the incumbent. At Ellastone, there was a new incumbent who was unable to find out how much the living was worth from his predecessor who had not left any accounts, and the new vicar was trying to recover what he called "neglected rights"⁽²⁾. At Ilam, the vicar, Bernard Port, was having trouble in collecting from certain of his parishioners⁽³⁾.

The tithe books of the incumbent of Baswich, John Dearle, spanning as it does the first half of the eighteenth century (1710-49), illustrates very well the uses and limitations of tithing in kind⁽⁴⁾. The greater portion of the book is taken up with notes on the money payments taken in lieu of tithe. When, however, Dearle wished to assert his right to a new tithe, the situation was different. Dearle had made no attempt to collect potato tithe, with the exception of one large estate, until 1741. When asserting his claim to tithe of this new crop, he asked for tithe to be set out in kind. One parishioner who refused to submit to the new demand was summarily dealt with:

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1. C.C.F.: NB20/189.
 2. *ibid.* NB20/125.
 3. *ut. supra.* pp.43. .
 4. W.S.L.: S.Ms.429/iii.

'Robert Shelley (paid) Potat. in kind growing in a Piece of Ground near his House. Will. Eldershaw Jnr. payd Potat. in kind. James Bolton was put in the Court attach'd upon a certificate, payd. Costs £2.5.0 payd to me for Potatoes £0.2.6.'

Similarly, when a dispute broke out between Dearle and another of his parishioners, Thomas Gnosal, in 1743 about payment of tithe hay, there was no question of continuing the agreement of 1742 for Gnosal to pay 1/2 per acre for all his Hay, clover and rye grass. Gnosal was required to pay in kind. Dearle noted in his diary:

'Gnosal (having carried his own Hay out of Marsh and Marsh Meadow) turn'd his Cattle in whereby the Tyth was damaged and spoil'd. After this, the Gate was lock'd and chain'd and ye Tything Man stopp'd from carrying it on the morning of June ye 25th.'

Gnosal was finally brought to heel by a suit instituted in the Lichfield Diocesan Court, until which time he continued to give trouble by deliberately spoiling the tithe crop. It should be emphasized, however, that Dearle's usual policy was to make agreements with his parishioners. Only when these broke down did he insist on his right of tithing in kind, and this is the general course adopted by most Staffordshire tithe owners from the early eighteenth century onwards. Tithing in kind was for the most part an unnecessary nuisance in a cash-oriented economy. The terrier remained a reminder of the traditional rights of an incumbent, and it was to his terrier that he would turn when a dispute over those rights occurred. The terriers which were returned at regular intervals to the Diocesan

Registry in Lichfield generally made no reference to the fact that tithes were no longer being taken in kind. Their function was not to record the contemporary situation but to rehearse the rights to tithe which the custom of the parish allowed to the incumbent. These rights could often resolve a dispute.

IV

Throughout the period, therefore, most tithe was paid in the form of money compositions. There were various ways in which this could be done. From the tithe owners' point of view, the most effective was to employ an experienced man, who knew the area over which the tithe was to be collected, to inspect the crops which were growing in the fields and to make an estimate of their value. He would then send an estimate to the farmer of the value of his tithe. The farmer had the option of agreeing to pay the sum estimated or of having his tithe drawn in kind. He generally chose the former. The parishioners of Leigh in 1813 made a statement in connection with a tithe dispute which revealed the usual proceedings adopted in their parish:

'The Rector & his predecessors have always resided at Blithfield ... & have always employed a person resident in the parish of Leigh at Tythman. In June every year, the Tytheman goes round the parish & enquires of the different farmers what Cows they have kept, what Calves have been born, what sheep etc. & how many acres of wheat, oats etc. Grass etc. are growing on their respective farms. Everything is reckoned up to the

'time the question is asked ... On the Monday after Advent

Sunday the Parishioners account with the Rector for the tythes
& compositions according to the acct. taken in June preceeding.⁽¹⁾

The tithe account books of Leigh which survive in an almost unbroken series from the late seventeenth century indicate that such compositions had been paid since the early eighteenth century. Tithes of corn were taken by a composition per acre with some allowance for the quality of the crop. Edward Blurton of Parkhall in 1717, for example, paid 15/- for tithe of "indifferent wheat" over 5 acres, 2/- for "good oats" and 1/- for "bad oats". John Steel paid 4/- an acre for "good wheat", 1/6 an acre for "indifferent oates" and 1/- an acre for "bad barley"⁽²⁾. By the 1770's, however, no distinction was made between good and bad crops in Leigh. Wheat was being taken at a standard rate of 6/- an acre, oats 3/-, beans 3/-, clover 1/- and upland hay 6d.

On the inside cover of Charles Bill's Tithe Book for Alton in 1783 was a calculation which showed that although the tithe was being assessed per acre, no allowance was made for the goodness or badness of the crop:

'Calculation for tithe on 1 Acre

	<u>Strikes</u>		<u>Tith</u>
Wheat	20 at 6s.	£6.0.0.	12s.
Barley	30 at 2s6d.	3.15.0	7s.6d.
Oats	30 at 2s.	3.0.0.	6s. (3)

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1. S.R.O.: D239/M4616-4620.
 2. W.S.L.: 93-97/31.
 3. S.R.O.: D554/37.

These represent some of the highest compositions for tithe in Staffordshire at the time, and it is not surprising that Bill found collection of such rates difficult, for Alton was a moorland parish with comparatively little suitable arable land.

When the tithe was assessed at midsummer, as in Leigh, it was customary also to make abatements in the tithe revenue if the corn harvest was not as large as had been anticipated - if, for example, the months of August and September were unusually wet. The tithe collector of Sir Edward Littleton in Penkridge in 1710 made a careful valuation of the tithe of each farm, crop by crop, and he originally assessed a certain Widow Robinson's tithe from 42 arable acres at £7.4.0. This he moderated by agreement to £7; but after a disappointing harvest, agreed to take £5⁽¹⁾. Such abatements were by no means uncommon.

It is clear that the most efficient means of obtaining tithe payment by composition was the employment of a land surveyor to make an annual valuation. The drawback was that it was expensive and the tithe owner had to calculate whether the estimated receipts justified the expense. It was also possible that the farming community might resent the employment of a yearly inquisitor. For one or other of these reasons, yearly valuations were adopted mainly by lay improPRIATORS of substantial means. The agents of the Marquis of Stafford after 1796 employed an experienced Staffordshire land

1. S.R.O.: D260/M/D/429/24.

surveyor and enclosure commissioner, John Bishton, to value the tithes of Codsall each year. Bishton charged 8d. in the pound of the value of the tithes until 1807, and then 9d.⁽¹⁾ Such expenses were only one of many concerned with tithe collection⁽²⁾ and it is not surprising that many tithe owners thought the expense, with no certainty of being able to reap a commensurate reward, not worthwhile.

The alternatives were to proceed in haphazard fashion, not making valuations but relying on local knowledge and farmers' trustworthiness to arrive at a satisfactory sum. It was possible also to make a valuation which would remain in force for a period of years - usually seven - while both sides retained an option to negotiate an abatement or a rise in the valuation if there were any unusual change in conditions - a very bad summer, or a change in farming from arable to pasture or vice versa. The method increasingly adopted by parochial incumbents without large incomes was for a valuation to be made when the incumbent was first appointed to a living, and for this to remain the basis for tithe revenue throughout the period of tenancy. Assistant Tithe Commissioners frequently reported that although inappropriate tithe rent charges could reasonably easily be ascertained because there had been annual valuations of the tithe, vicarial tithes were on the basis of long-standing compositions. George Ashdown stated in December 1838 that receipts for vicarial tithes in Wolstanton had remained unchanged since the last valuation

1. S.R.O.: D593/F/3/7/1 - 33 passim.
2. See below pp. 65-70.

in 1801⁽¹⁾. It was, of course, understandable that a new incumbent should wish to take stock of his living, and a valuation was a successful way of doing this. An unwary incumbent might well be defrauded of certain of his tithes by parishioners anxious to take advantage of the fact that a new man would not appreciate the various customs of the parish. It is not coincidental that certain terriers of the early eighteenth century show evidence of changes in custom when there is a change in incumbency. The Kingsley terrier of 1732 includes a new section of customs in lieu of tithe of wool and lambs which had not been included before, and the whole tenor of the terrier is more favourable to the parishioners than previous ones⁽²⁾. Richard Smallbroke, as Bishop of St David's in 1725, was well aware of the danger when he noted in his Charge to the Clergy:

'Every successor in a Parochial cure is unavoidably in a state of Ignorance for several Years and liable to be imposed on by those that are ready to make use of so inviting an opportunity, who though very ignorant in other respects are often very knowing in those affairs within the narrow limits of their own parish to which they have been bred and have confined their thoughts.'⁽³⁾

At Barlaston in 1834, certain parishioners attempted to influence the choice of their next incumbent on the basis of his attitude to

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1. P.R.O.: I.R.18/9549.
 2. L.J.R.O.: B/V/6: Kingsley 1732.
 3. R Smallbroke: Charge to the Clergy of St Davids by the Bishop 1725. W.S.L. Pamphlets. (Visitation Charges).

tithe collection. During the long incumbency of Rev Benjamin Adams the inhabitants of Barlaston had been paying very low compositions. When Adams died one of the leading inhabitants, a Mrs Adderley, entered into negotiations with another poor curate, Mr Barton, for him to succeed Adams on condition that he took tithes on no stricter level than the old curate had done⁽¹⁾. When the patron of the living, the Duke of Sutherland, chose another candidate, William Oliver, he instituted twelve years of legal wrangling. One of Oliver's first actions as curate was to employ a leading surveyor, Charles Heaton of Leek, to value the Barlaston tithes. The parishioners refused to accept his valuation which would have trebled the value of the living at a stroke⁽²⁾.

V

The greatest single obstacle to the realisation of the theoretical tenth of all produce, however, was the prevalence of the Modus. Plowden defined a Modus Decimandi as in force:

'where, by custom, a peculiar manner of tithing subsists from time immemorial, differing from the common law of taking tithe in kind, which would have taken place in case such peculiar manner of tithing or modus, had not been allowed in a particular place or instance.'⁽³⁾

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1. S.R.O.: D593/K/1/3/25: Lewis to Loch. 18 February 1837.
 2. *ibid.* D593/K/1/3/22 (May) See below, Chapter IV, pp. 139-146.
 3. F Plowden: The Principles and Law of Tithing. 1806. p.198.

The legal position concerning modus payments is discussed elsewhere⁽¹⁾, but it is clear that the existence or absence of modus payments in a particular parish made an enormous difference to its tithe receipts. Modus payments were of two types: 'parochial moduses' and 'farm moduses'. The parochial modus was a customary payment, assumed to have been unvaried from time immemorial and thus derisorily small by the period under study, in lieu of a particular crop or tithe animal throughout most or all of the parish. Its origins undoubtedly lay in the desire of incumbents to avoid tithing all of ~~the~~^{their} produce in kind. The monetary payments accepted, if unvaried over a long period of time, were assumed to have become "customary payments" - part of the custom of the parish - and as such unalterable. As Lord Chief Justice Hardwicke in 1747 declared in the case of *Ekins v. Dormer*:

'A modus is nothing more than an ancient composition between the lord of a manor and the owners of the land in a parish and rector, which gains strength by time.'⁽²⁾

It is not uncommon to find parish terriers mentioning that one small part of the parish remains liable to tithes in kind, presumably that part which the incumbent had originally kept for his own use, while the remainder pays a small modus. At Audley in 1698 it was noted:

'There is one Meadowe called the Hall Meadowe belonging to the tenement of Mr. Haworth which onely payeth tyth-hay in

1. See below, Chapter III, pp. 86-91.
 2. Plowden: op. cit. p.176.

'kind (viz.) every 10th. cock in grass soe soon as itt may be cocked and counted is to have room made for the Vicar to carry itt out and make itt in a convenient place - and for all the rest of the hay in the said Parish .. all the parishioners & the said Mr. Haworth for the residue of his hay are to pay for every day's mowing 1d., as well up land as all other sort of Meadowing - and to pay neither more nor less.'⁽¹⁾

The "day's mowing" or "day's math" in Staffordshire was in some places the equivalent of $\frac{3}{4}$ acre and in other places a full acre. Between 6d. and 9d. per acre was payable for meadow land tithes in Staffordshire when not under modus at the beginning of the period, and this had risen to between $\frac{4}{6}$ and 7/- by the 1830's. It is clear, therefore, that the question of the validity of such moduses as those at Audley was of primary importance. If a tithe owner could prove the moduses invalid, his income could rise spectacularly.

'Farm moduses' differed in origin; but they could be similarly crippling. The farm modus was generally traced back to an agreement made by a previous lord of the manor for the whole of his tithes to be compounded for a sum of money which would originally have been an economic equivalent. It was, therefore, paid in lieu of tithes over a particular farm, often the demesne lands of a lordship, and not for a particular crop. At Lapley the terriers continually noted:

'The demesne land is exempt from paying Tyths. It pays forty

1. L.J.R.O.: B/V/6: Audley. 1693.

'shillings p. ann. to the Vicar.'⁽¹⁾

This payment survived until tithe commutation in 1838, when the same modus was listed in the schedule to the award of rent charge. The demesne lands covered about 800 acres of the parish⁽²⁾. Had these lands not been covered by a modus for £2, the rent charge apportioned on it would have been in the order of £50, raising the vicarial rent charge by about 25%.

It is interesting to note that the most common moduses in Staffordshire cover crops or produce which would have been in any case difficult and troublesome to collect. Such was probably the reason for instituting money compositions in the first place. Significantly, a modus for corn crops is never found except as part of a farm modus exonerating all tithes. Corn was almost always the most valuable tithe, and certain impropiators seem to have regarded it virtually as the only tithe worth collecting regularly. Tithe of milk, as might be expected, was the tithe most subject to modus. Milk was a tithe at once difficult to collect and of uncertain value with enormous problems of prompt marketing and efficient distribution. The usual modus taken in Staffordshire was 1d. for each cow in lieu of the tithe of milk from that cow. From the 87 terriers of Staffordshire which contain information about tithing customs, moduses for milk were mentioned on no fewer than 67 occasions. Tithing of milk in kind was virtually unknown in Staffordshire. Tithe of hay, also, was frequently subjected to moduses which bore no relation to the

1. L.J.R.O.: B/V/6: Lapley.
2. P.R.O.: I.R.29/32/137.

economic equivalent of the tithe. 42 of the terriers indicate that a substantial portion of the hay tithes were paid only as moduses. This is probably an underestimate for certain of the terriers do not mention the customs for tithing hay when hay was regarded as a great tithe to be collected by a lay impropriator. Tithe of garden produce, which became increasingly valuable in South East Staffordshire later in the eighteenth century because of the growing demands of the Birmingham market, was also covered by modus payments. Many a tithe owner had to be satisfied with a penny or twopence from each garden when the tithable value approached ten or even twelve shillings an acre. Other moduses of a penny or two were frequently found for tithe of colts, and honey from swarms of bees, while it was common for two or three eggs to be paid to a tithe owner in lieu of tithe of hens. Farm moduses were similarly common. Virtually the whole of the extensive parish of Eccleshall was exonerated from payment of vicarial tithes by small moduses. The Vicar of Abbots Bromley had to content himself with only £2.12.4 from 1390 acres in the township from prescriptive payments due from the three leading landowners, the Earl of Dartmouth, the Marquis of Anglesey and William Sanders⁽¹⁾. In such a situation, and increasingly as the price inflation of the eighteenth century had its effect, it is hardly surprising that many tithe owners should decide to test the validity of many of these moduses which were decimating what they regarded as their true income.

1. P.R.O.: I.R.29/32/1.

It was this attitude which gave rise to much of the tithe litigation of the eighteenth and early nineteenth centuries.

Matters were not eased by farmers using their modus lands as a lever to negotiate more satisfactory tithe compositions. In areas where moduses were common in lieu of, for example, hay, cows and calves, many farmers would find it more profitable to practise pasture farming and pay virtually no tithe, rather than turn over to arable and pay a full tithe or composition. No doubt much of Northern Staffordshire was intrinsically more suited to pasture than arable farming; but the fact that tithe of milk was virtually unheard of in the area undoubtedly contributed to the extensive cheese manufacture so frequently noticed by land surveyors in the early nineteenth century⁽¹⁾. To this extent the prevailing tithe system may be said to have affected farming practice. When John Tomlinson, who was busy trying to revive the dormant rights of the rectory of Stoke-on-Trent, claimed tithe of milk from his parishioners in 1818, he found that certain inhabitants 'removed their Cows into another Parish (where tithe was not claimed) rather than pay the tithe of milk'⁽²⁾. A reply given by a prominent farmer in Alton, Matthew Smith, to a request for an increased composition for tithe of hay be the impropriator, Charles Bill, in 1786, adequately sums up how tithe payers were prepared to use modus lands as a bargaining counter:

4 July 1786

Hond. Sir,

1. See for example, P.R.O.: I.R.18/9231-9560, *passim*,

2. S.R.O.: D239/M4621-3.

' I recd. Youres, and am Sorrey to find you so Obstenate respecting the tithe hay - Donte deny but it may be worth the money you ask if the whether cold (could) be Instrured (entrusted) but Considering the hazard am Unwilling to Pay more than 3s.0d per Acer, including the Seed Grass, and other Inferior Land. Think it a verry fair Price. If you are determined of so unpresented (unprecedented) a Price it will Put Me uppon a footing that I whould not wish to Pershue, as I have it in my Power to Evade myself of paying tithe Corn at all by taking other lands into my hands wher the tith is my one (own) Property and Likewise Mowing the whater meadow wich onely pays a small Modus.

It gives me Concern that a Gentleman of youre Great abillityes should throw cold whater uppon Industarey.⁽¹⁾

Moduses were extensive in Staffordshire, and were clearly of great importance in determining the value of a living or an impropriation. They provided one of the major flashpoints of tithe history in the period under study.

VI

It was generally supposed to be more advantageous to pay tithes to a cleric than to a lay impropriator or his lessee. In the middle of a long attack on the tithe system, Lena Tadman stated that impropriators:

1. S.R.O.: D554/37. Smith to Bill.

'tease and vex us more by half than the clergy'.⁽¹⁾

John Neve told the Select Committee on Agricultural Distress in 1833:

'We generally consider that we can make a better bargain with the clergyman than we can with the layman.'⁽²⁾

Charles Osborne of Hayling Island elaborated:

'I think the tithes belonging to clergymen are generally lower, the lay impropriators have no fear of coming into hostility with the farmer ... an impropriator does not care whether he pleases the people, the clergyman does.'⁽³⁾

An understandably anonymous correspondent to the Bath and West of England Agricultural Society pointed out that in fertile country the lay impropriator could take his tithes with the utmost rigour:

'I could take a semi-circle round Bath of twenty miles from the centre, and point out a few modes of lay collection of tithes to parallel which I defy anyone to produce clerical instances; aye, I would venture to select my cases from Members of the Bath Agricultural Society.'⁽⁴⁾

Not surprisingly, the clergy themselves were quick to point out that their major concern was not to collect tithes but to live in harmony with their parishioners; though they often did so only to remark that the continuance of the latter was dependent on their liberality in the former. The Vicar of St Mary's Lichfield stated in 1832 that his net revenue was £500 per annum:

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1. Quoted in The Pamphleteer, Vol. XII 1818. p.505.
 2. P.Ps. (H.C.) 1833 Vol. V. Evidence of John Neve.
 3. *ibid.* Paras. 10106 and 10112.
 4. Proceedings of the Bath & West of England Agricultural Society Vol. XIII pp.415-430.

'Altho' I believe the real value of my living may be £1000 yet in the present unsettled state of things, it being impossible for a peaceably disposed clergyman to get his due, I believe it very probable that the present annual receipt of £500 may decrease; as in fact I am obliged to take anything the payers choose to give.'⁽¹⁾

John Simpson, Vicar of Alstonfield, believed as did many of the clergy of Staffordshire that his income could be increased, but

'the present Incumbent has agreed not to raise or alter the compositions with the present occupiers of land & who now pay abt. the half of what is due:

It might also be very considerably increased by taking tithe hay in kind, or increasing the compositions for it: at present some pay 1d. others 2d. and others 6d. per acre for Hay, but this could scarcely be done without litigation.'⁽²⁾

There can be no doubt that many clergymen were receiving nothing like their theoretical due, the basic difference with laymen, of course, being the clergy's concern for the moral welfare of the community which he was at least supposed to promote. Thomas Thompson pointed out the dilemma:

'The clergyman who quarrels with his parishioners on account of tithes is seldom troubled with a large congregation; and when people desert their parish church they do not often frequent any other. They are led first to despise the clergyman and

1. C.C.F.: NB20/210.
2. ibid. NB20/9.

'and then the religion of which he professes himself a minister.'⁽¹⁾

The evidence from Staffordshire suggests that many of the clergy were indeed concerned at the effects of a vigorous tithing policy, although the numerous tithe suits initiated by clergymen indicate that there were exceptions enough. Usually, attempts to change the compositions were made in a partly cajoling and partly threatening tone. The following letter, from the Rector of Hamstall Ridware in 1824 is fairly typical:

'I now ask £250 ... The more I reflect on the subject the more I feel satisfied that under the present circumstances ... I have made to the occupiers of land, even on their own construction of the Terriers, not only a moderate but a liberal offer; and one in accepting which I think they have not been wise in making a moment's hesitation, because by so doing they have given me just grounds, had I been disposed to avail myself of them, for having immediate recourse to other measures ... But not wishing to push things to extremity, I have given you and them a few Days longer to think on it, which condidering the advanced state of the season was more than I could reasonably have been expected to do. I shall look for a definitive answer on Tuesday next, that either an Agreement according to my proposal may be immediately completed or that I may feel myself at liberty to put the business into other hands.'⁽²⁾

1. T Thompson: Op. cit. p.112.

2. S.R.O.: D1/A/PI/IZ. Edward Cooper to William Riddell. 9 July 1824.

Undoubtedly the only way to retain credence as a pastoral figure in many village communities was to accept lower compositions than were theoretically due. On the other hand, there was the "sacred duty" pointed out often enough in Episcopal Charges and establishment literature to preserve and maintain "the rights of the church" for which the present incumbent could only regard himself as a trustee. Many would have agreed with Rev William Jones, the Vicar of Broxbourne and Hoddeston (Herts) in 1803, although they regarded the situation as inevitable:

'I am confident that I am defrauded by many of my parishioners of various vicarial dues and rights to which the laws of Heaven and earth entitle me ... for the very word "tithe" has ever been as unpleasing and odious, to farmers especially, as cuckoo to the married ear. Those who pay them, pay them very partially and, I may say, grudgingly and of necessity.'⁽¹⁾

It should not, however, be assumed that all lay improPRIATORS although not troubled by such moral questions, were rapaciously grasping the last tithe penny. The Staffordshire evidence does not entirely support Professor Best's generalisation that:

'The farmer who grumbled exceedingly in paying the parson paid his tithes to the squire as a matter of course.'⁽²⁾

ImproPRIATORS could also meet with mounting arrears and blank refusals to pay. If the improPRIATOR was unwilling to take his case to court,

1. (ed.) O F Christie: The Diary of Rev William Jones, 1777-1821.
2. Best: op. cit. pp.187-8.

then the tithe payers could take advantage of the situation. In the parish of Aston (Warwicks) in 1821, for example, Messrs Robins and Fowler, lessees of the great tithes, received on accounting day only £269.16.0 $\frac{1}{4}$ of the £437.0.9 $\frac{3}{4}$ due, the immediate arrears being 37.7%⁽¹⁾. Nine months later 20% still remained unpaid. Not even the inducement of a ten per cent reduction if tithe were paid promptly - a measure adopted by many tithe owners - had much effect. The total arrears in Aston between 1828 and 1847 amounted to £984.13.1, the equivalent of almost three complete years dues⁽²⁾.

The Duke of Sutherland's agents had much the same problem in Codsall. A running list of arrears was kept from 1829 to 1849⁽³⁾. This totalled £178.16.6 by 1849, which was about one and a half times the usual yearly dues. From time to time, marginal comments were added concerning payments due. Often the note "Irrecoverable" appears against a man's outstanding arrears, and in 1842 a survey made by the agent revealed that of the theoretical arrears of £220.14.5 only £77.5.6 was recoverable. In 1840, for example, four small proprietors gave as their excuses for non-payment the following:

'William Illage	(arrear £1)	'Says the Duke has no right'	
John James	(arrear 3/6)	'Says he was overcharged'	
William Johnson	(arrear £1.2.0)	'has taken the benefit of the Insolvency Act'	
John Grosvenor	(arrear 3/6)	'Says he will not pay.'	(4)

1. B.R.L. Jewel Baillie Mss. 272/22.
 2. *ibid.* 272/18.
 3. S.R.O.: D593/G/3/4/2-67.
 4. *ibid.* D593/T/2/19.

Doubtless the defaulters calculated that such sums as these were not worth going to law for; and the Marquis of Stafford's Trentham agent, William Lewis, wrote many gloomy letters to his chief agent indicating the difficulties he faced⁽¹⁾. In 1824 he wrote of payments in the Chatwell area of Codsall:

They 'have been collected with a great deal of trouble this and the past years, and the same have been valued fairly. The tenants are disposed to give much trouble & the only way to bring them to their sense of duty is to let the Tithes for 3 years to a person who will collect them strictly.'⁽²⁾

Such a course of action was not followed, and the arrears continued. Examination of inappropriate account books indicates that these examples were fairly typical of the situation in Staffordshire. They were not the only burdens which the tithe owner had to bear. Tithe was regarded as a form of property and as such liable to all of the privileges and burdens laid upon the landed interest. It was rated to land tax, property tax and poor rates. In addition there were often further expenses to be met for valuation of the tithes, and for the custom which was widespread throughout the country of giving a tithe feast or dinner to the leading inhabitants of the parish after the Tithe Audit, when farmers came to pay their dues. The Vicar of Cumnor (Berks) in 1759 explained the situation in his parish:

1. ut supra. p.30.
2. S.R.O.: D593/K/1/3/12 (April).

'It is a custom here for the parishioners, all those that pay the vicar any tithes, immediately after prayers in the afternoon of Christmas Day to repair to the vicarage, where they are entertained with bread and cheese and ale. They claim on this occasion four bushels of malt, brewed into ale and small beer, two bushels of wheat made into bread and half a hundred weight of cheese. The remains of the ale, small beer bread and cheese are divided the next day after morning prayer to the poor of the parish.'⁽¹⁾

In Weston Longville (Norfolks) Parson James Woodforde gave a tithe feast for his parishioners immediately after his tithe audit which was held yearly in early December. Usually Woodforde noted that the tithe payers enjoyed themselves hugely at his expence, and he was wont to call his tithe feast his "Frolic". In 1776, he noted in his Diary:

'My Frolic for my People to pay Tithe to me was this day. I gave them a good dinner, surloin of Beef roasted, a Leg of Mutton boiled and plums (sic) Puddings in plenty ... Every Person was well pleased and were very happy indeed. They had to drink Wine, Punch and Ale as much as they pleased.'⁽²⁾

There are indications in the Diary, however, that all was not as pleasant as appeared on the surface. The parishioners certainly took the opportunity which their parson provided to drink their fill, and

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1. Bibliotheca Topographica Britannica Antiquities: Vol. IV, 1790. I am indebted for this reference to Mr R Malcolmson, of Queen's University, Ontario.
 2. (ed.) J Beresford: Diary of a Country Parson (1924) Vol. I p.193.

on occasions alcohol revealingly loosened their tongues. In 1782, Woodforde noted that one of the farmers, one Forster, 'behaved so insolent towards me that I don't intend to have him ever again at my Frolick'⁽¹⁾. Forster was told in February 1783 that in the coming harvest Woodforde would take his tithe in kind⁽²⁾. The dispute must have been patched up, however, because Forster took his place in the 'Frolick' in December 1783 when Woodforde gratifyingly noted:

'We had this year a very agreeable meeting here, and were very agreeable - no grumbling whatever.'⁽³⁾

There is evidence that Woodforde was in any case an easy man for a farmer to agree with on questions of tithe settlement, such that he would normally expect his tithe audit to be a pleasant affair.

Certainly the first thing that Woodforde's successor in the parish did was to double the rate at which tithes were taken⁽⁴⁾.

The tithe feast could be a substantial item of expenditure, especially in a large parish with influential landowners. In Trentham, for example, the Marquis of Stafford's estate was paying an average of £15 per year in the 1810's and £18.17.0 in the 1820's⁽⁵⁾. The impropiators of Aston were paying £9 for the feast, although admittedly more for the provision of ale and tobacco than for the meal

1. (ed.) J Beresford: Diary of a Country Parson (1924) Vol.II p.46.
2. *ibid.* Vol. II, p.59.
3. *ibid.* Vol. II, p.107.
4. *ibid.* Vol. V, p.413. Letter of Elizabeth Girling. 6 May 1803.
5. S.R.O.: D593/F/4/1/25.

itself⁽¹⁾. If a tithe feast were not offered the leading parishioners might feel slighted. A petition from six inhabitants of Cauldon (Staffs) in the early nineteenth century put the point forcibly:

'To Mr. James Burnett: Grindon

'We the principal tithe payers in the parish of Cauldon do desire that Mr. Burnett will take it into his consideration and allow them to meet him in some respectable room in their own Parish when they pay to him Tithe (or rent charge) and allow them to have a slice of Beef and a quart of Ale; and not come round like a collector of Taxes as he has done of late.'⁽²⁾

The total expenses, therefore, could be heavy. The tithes of Codsall after 1796 were surveyed each year, and the tithe then let to the respective owners of land. In 1809, a typical year, the gross value of the tithes was set by the valuer at £201.19.6. The valuation charge was £7.11.6, and the tithe dinner cost £1.4.0. The tithes were also assessed to property taxes of £16.17.0, while the land tax and poor rates together amounted to £10.14.10 for the year⁽³⁾. Thus, a total of £36.17.4 in taxes and expenses were payable on the gross assessment. The other, unquantifiable, factor was how well the tithe would be paid, and the Codsall tenants were notoriously unreliable in this respect⁽⁴⁾.

The method of rating tithes to the various assessments could also be a source of friction if the leading parishioners believed that

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1. B.R.L.: Jewel Baillie Mss. 278/5.
 2. W.S.L.: M.842 (Undated, but probably 1830's).
 3. S.R.O.: D593/F/7/1-33.
 4. See above, p. 30.

the tithe owner was being excessively severe. There was the possibility that influential parishioners would try to be ~~av~~^avenge^d on a stern tithe owner by attempting to over-rate his property. A defender of the tithe system, writing to Cobbett's 'Political Register' in 1808, pointed out that a new incumbent who wished to obtain his full tenth might find himself penally rated to the poor rates for his pains⁽¹⁾. John Tomlinson, the new rector of Stoke-on-Trent found himself in contention throughout the 1820's with the Select Vestry over his assessment to the poor rates. Tomlinson argued that a combination had been formed against him and that whereas "Collieries ... Water Works, Gas works and other classes of property" were valued at half the estimated yearly amount with a deduction of 1/9 the tithes were valued at:

'Two-thirds of a valuation that they would not let for to a responsible tenant.'⁽²⁾

He continued the attack with an article in the Staffordshire Advertiser in January 1827, alleging corruption in the vestry and stating that:

'Tithes are rated in a double proportion to land.'⁽³⁾

It took Tomlinson nearly another year to get his grievance heard at Quarter Sessions when, after considerable expense, his rating was reduced by over £180 - from £1322.6.0 to about £1140⁽⁴⁾.

1. Cobbett: Political Register, Vol. XIII 1808, pp.341-5.
2. S.R.O.: D593/K/1/3/16.
3. Staffordshire Advertiser: 20 January 1827.
4. S.R.O.: D908/5.

The mechanism of tithe collection, therefore, for various reasons, creaked audibly. There were a large number of tithe owners - lay and clerical - who by the late eighteenth century were finding their property objectionable and who would have liked nothing better than to be rid of their burden, if they were fortunate enough to find a buyer. In abundant corn country this might be easy; but few were prepared to slave at trying to make a viable economic proposition of a moorland or industrial parish where customary payments and prescriptive rights abounded and where gross receipts were likely to decline rather than rise. Many tithe owners, it is clear, were happy to establish a satisfactory "modus vivendi" at the cost of a substantial drop in their tithe receipts. In Staffordshire, at least, customary payments and rights abounded to such an extent, and means of evasion were so well developed, that many tithe owners realised quickly that the discretion of a lower income amicably arranged was better than the doubtful valour of a lengthy battle against entrenched positions, guarded by customary right. For those who did not accept this situation, the law courts provided the entrance to a dark tunnel the end of which no litigant could be sure at the outset of seeing.

CHAPTER III: The Protection of the Law

I

Tithe legislation was an unwieldy amalgam of statute and case law. At first sight, common law protection for tithe owners appeared to be simplicity itself. As Thomas Cunningham explained:

'Of Common Right, tithes are to be paid for such things only as do yield a yearly increase by the Act of God.'⁽¹⁾

This definition would effectively debar a tithe owner from collecting minerals extracted from the earth - coal, tin, iron or chalk - as these were part of the substance of the ground and not nourished by it. Many eighteenth century industrialists, making their fortunes by exploiting these mineral resources were grateful for this common law proscription of the obligation to yield tithes. Parts of South-West and North Staffordshire, for example, were eventually almost denuded of agricultural produce by the spread of mines and quarries, but the tithe owner could claim no recompense for the loss of his tithes unless the custom of the parish could be shown to permit such tithing from beyond the limit of legal memory. The same restriction applied in common law to tithes of fish whether caught in the sea, rivers or ponds, as fish were regarded as "ferae naturae" and not nourished by the earth⁽²⁾. As has been seen⁽³⁾ in these and in other cases common right deferred to the custom of the parish. It could be argued in

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1. T Cunningham: A New Treatise on Laws Concerning Tithes 1766. Goldsmiths Library. GL 1766.
 2. H Gwillim: A Collection of Acts and Records respecting Tithes 1801. Vol. II, p. 616; see also Vol. III, p. 937 and Vol. IV, p. 158. Austen v. Nicholas, 1717.
 3. See above, Chapter I, pp. 17-18.

any case that common right was nothing more than a collection of the usual customs relating to tithe payment. As such, they stood only when there were no local customs to countermand them. It was not difficult to find amending customs. Francis Plowden, one of the most authoritative writers on tithe legislation, asserted in 1806:

'Such ... has been the extent of interference by the legislature, or deviation from the original payment of tithes, through the laches of incumbents the imposition of parishioners, or the unadvised determination of the Courts, that few parishes are to be found in England which pay their tithes in every particular according to the common law principles, usage and practice of tithing.'⁽¹⁾

It is none the less important to understand these "common law principles" so that the extent of the "deviation" may be appreciated. Plowden himself went on to list no fewer than 76 crops or types of produce stating whether each was liable to payment of tithe by common right. The following extract from his list illustrates well how finely drawn the line could be between tithable and non-tithable produce:

'BEES are reckoned among the things that are *ferae naturae* and tithe free; yet, being gathered into hives, they become the property of some particular person and then lose that privilege and are titheable at least as to their produce, for it has been determined that the tithe due for them shall not be paid by the

1. F Plowden: The Principles and Law of Tithing 1806. p. 117.

tenth swarm but that the tenth measure of honey and the tenth pound of wax shall be sufficient.'⁽¹⁾

Behind such ramifications lay one simple principle. Common law protected the property of the tithe owner when that property was defined as the right of the tenth share of the increase nourished by the land. Most of the complexities arose because of the difficulties encountered in ascertaining a fair tenth. What happened, for example, when land lay fallow? A tithe owner in the reign of James I claimed that he should have compensation for land left deliberately fallow. He lost his case because it was held that the land was kept fallow for one year only in order that it might produce a larger yield in the following year - the obvious reason for fallowing. As the tithe owner shared in this yield by taking his tenth he could claim no compensation for his deprivation.⁽²⁾

Statute law naturally upheld the right to tithe. An Act of 1535 made it clear to "divers numbers of evil-disposed persons" that the Henrician Reformation in no sense provided a loophole for lapses in tithe payment. Those defaulting were to be dealt with:

'By due process of the king's ecclesiastical laws of the Church of England ... or other competent judge of this realm.'⁽³⁾

A more important statute, which went some way towards defining which lands were to be considered tithe free and which formed the basis of tithe legislation during the period under study was passed in 1549⁽⁴⁾.

1. *ibid.* p. 121.

2. Cited in Plowden: op. cit. p. 124.

3. 27 Henry VIII cap. 20.

4. 2 & 3 Edward VI cap. 13.

Every person was enjoined to set out his tithes

'without fraud or guile ... in such manner and form as hath been of right yielded and payed within forty years next before the making of this act, or of right or custom ought to have been paid.'

If the tithe were not paid in due form then the ecclesiastical courts were empowered to impose a penalty amounting to double the value of the tithes withheld^h, together with the costs of the action. If action were to be taken in a temporal court, this would not be regarded technically as an action to recover tithe, but an action for debt. In this case a sum equivalent to treble value could be recovered. The Act stipulated, however, that cases of simple withdrawal of crops before the tithe had been paid should be heard in the first instance only "according to the King's ecclesiastical laws" in a church court. If a defaulter, condemned to pay tithes by the ecclesiastical court, refused to obey the sentence, then the court would declare him excommunicate and apply for the apprehension of the defaulter by the secular arm in the issuing of the writ 'De Excommunicato Capiendo'.

The 1549 statute was not, however, a statute which primarily defended the rights of tithe owners. In the first place, a time limit was imposed on the obligation to pay personal tithes. If a man had not rendered tithes on his "merchandises ... clothing, handicraft or other art or faculty" - personal tithes - during the past forty years, then he could no longer be compelled to such an obligation⁽¹⁾. Further

1. ut supra. Chapter I pp. 7-8.

relief was provided by another clause which enacted that lands which were barren of their own nature, but were brought into cultivation by means of capital expenditure on improvement, should not pay tithe until seven years had elapsed from the time of improvement. In the first few years after improvement, of course, tithe bore disproportionately heavily on the agricultural improver, representing a tax of far more than a tenth on his outlay. This clause, therefore, provided much needed relief and became especially well-known to courts in the eighteenth century when it was invoked time after time as a defence against claims for tithe from recently improved land. What the courts had to decide was whether, before improvement, the land from which the tithe was claimed was barren of its own nature, or merely left unproductive. Only in the former case could the 1549 statute be successfully invoked.

Possibly even more important for subsequent tithe history was the limitation of the use of oaths by ecclesiastical courts. After the passing of the 1549 statute it was no longer possible for courts to ascertain what tithe was payable by the expedient of putting a man on oath. Previously this had been a common procedure. Indeed, as it was already exceedingly difficult to calculate a man's personal tithe, the Church regarded the oath as crucial for obtaining such information. Mr Little's researches revealed that in certain market towns personal tithes represented up to 40% of the total at the beginning of the sixteenth century⁽¹⁾. In a rapidly changing economic climate and with

1. A G Little: Personal Tithes, English Historical Review, 1945. pp. 87-88.

the loss of the oath, this percentage declined dramatically. By the beginning of the period under study tithe was for the most practical purposes an agricultural impost only.

Compared with the 1549 statute, those passed in the period under study were for the most part of minor importance. They do, however, show that the legislature was prepared to alter the law when a particular situation demanded it - a factor of importance when conservatives attempted to hold back reform in the 1820's and 30's by arguing that it was not for the legislature to interfere with a system which could be said to have divine ordination. In 1696, two Acts were passed which aimed at simplifying and shortening the procedure of recovery of small amounts of tithe. It had long been complained that the procedure was cumbersome, and, because costs naturally mounted with time, unnecessarily punitive. The principle of summary jurisdiction was introduced for the first time to deal with tithe claims. The owner of small tithes who claimed arrears not exceeding 40/- from a defaulter was empowered to apply to two Justices of the Peace who would summon the defaulter and order payment to be made on pain of distraint of goods⁽¹⁾. By special dispensation the amount claimed in respect of the Society of Friends was set at £10⁽²⁾. It is to be noted that recourse to these statutes was not mandatory. If he so chose, the tithe owner could still subject defaulters to the full rigours of the law in ecclesiastical or equity courts. None the less, for parties who desired a speedy settlement, the statutes

1. 7 & 8 William III cap. 6.

2. 7 & 8 William III cap. 34. See below, Chapter VI p. 183

represented a distinct improvement.

Another new principle was introduced in tithe legislation in the 1690's when Acts were passed which set a limit to the amount which could be demanded for crops of hemp and flax. These comparatively new crops were stated in the preamble to the Act of 1699 to be 'exceedingly beneficial to agriculture' and deserving of:

'great encouragement by reason of the multitude of people that are and would be employed in the manufacture of these two materials.'⁽¹⁾

For this reason it was forbidden for tithe owners to levy more than five shillings for each acre of flax and hemp sown. For the first time, the legislature had interfered with the amounts which could be collected on certain crops. The Act was made perpetual in 1714⁽²⁾; and in 1757 a further crop, Madder, was protected in exactly the same way, as

'an ingredient essentially necessary in dying and calico printing and of great consequence to the trade and manufactures of this Kingdom.'⁽³⁾

Even though both Acts had been introduced to stimulate war-time economies, an important principle of legislative interference had been established.

Certain attempts were made further to alter the laws regarding the assessment and collection of tithe, together with attempts to circumscribe the rights of litigants in tithe cases, but they met with no success until the early nineteenth century when the tithe system came

1. 11 & 12 William III cap. 16.
3. 31 Geo. II cap. 12.

2. By 1 Geo. I cap. 2.

under its most sustained attack. As a result of this attack, and in the new climate of opinion concerning the Established Church, an important Act was passed in 1813⁽¹⁾. By this, the limits of cognizance by Justices of the Peace were raised from 40/- to £10, and in the case of Quakers, £50. Also the traditional punishment of excommunication for non-appearance in ecclesiastical courts was abolished. Most important, however, was the limitation of tithe suits. From 1813, plaintiffs could only sue if fewer than six years had elapsed since the non-payment complained of. Thus, plaintiffs were no longer able to collect arrears of ten or twenty years in one action.

The causes which clerics and conservatives had strongly supported for over a century came under constant attack in the 1830's and the ancient rights preserving tithe payment had been severely mutilated by the time the Tithe Commutation Act was finally passed. After 1832, defendants of a modus had only to prove continuous payment for 30 years in order to have it firmly established by law⁽²⁾. By an Act of 1834, zealous tithe owners were unable to recover ancient claims if it could be shown that no payments had been made during the previous sixty years⁽³⁾. In 1835, the measure which the Quakers and others had sought since the passing of the 1696 Acts was finally put on to the Statute Book. Tithe owners making claims for less than £10 could ~~have~~ henceforward have redress only in magistrates' courts⁽⁴⁾. The loophole to protracted and vindictive litigation was belatedly closed -

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1. 53 Geo. III cap. 127.
 2. 2 & 3 William IV cap. 100.
 3. 4 & 5 William IV cap. 83.
 4. 5 & 6 William IV cap. 74.

but barely a year before the Tithe Commutation Act radically altered the entire situation.

II

Historically, tithe disputes had usually been settled in ecclesiastical courts. The first statute expressly confirming ecclesiastical jurisdiction was the famous 'Circumspecte Agatis' of 1286⁽¹⁾. This statute was confirmed from time to time, until its provisions were incorporated in the statute of 1549. Ecclesiastical jurisdiction was organised according to dioceses and the bishop held the right of "judex ordinarius" within his own diocese⁽²⁾. He had power to appoint a consistory court to sit, generally in the cathedral city of the diocese, under the jurisdiction of the bishop's chancellor. Proceedings in the consistory court followed a measured and invariable pattern. The suit was initiated by the issuing from the court of a citation to the defendant to appear before the court on a certain day. This citation was a purely formal document which stated only in the most general terms the nature of the offence. When the citation was returned, and if the person cited put in an appearance by his "proctor" or counsel, then the plaintiff would issue the libel. This stated the exact grounds of complaint, and a copy was delivered to the defendant for his perusal⁽³⁾. The defendant would then enter his personal answers to the libel. If the answer were considered by the

1. 13 Edward I cap. 4. See Phillimore: op. cit. p. 1502.

2. R Burn: Ecclesiastical Law (1824 ed.) Vol. II, p. 41.

3. See L.J.R.O.: B/C/5 for examples of Citations and Libels.

plaintiff not to be sufficient, he pointed out the deficiency in his Exceptions to the Answer. In turn the defendant might reply in his Replication which might elucidate a point unclear in his answer, or seek to argue the invalidity or inadmissibility of the exception. If relevant, witnesses for both sides were examined privately before the court. On the basis of all this verbal and written evidence, the chancellor would finally issue his sentence in which he was empowered, but not necessarily enjoined, to award costs. If costs were awarded, the successful party would bring into court a bill of his costs expended in promoting or defending the suit. This the court would "tax", allowing only essential items of expenditure to remain. The amended, or taxed, bill would be presented for settlement to the party having to pay costs.

As will be seen⁽¹⁾, many cases never reached this stage. One of the commonest reasons was the existence of the writ of prohibition. Burn, writing over a century after the great attack led by Sir Edward Coke on ecclesiastical jurisdiction, stated:

'As the laws and statutes of the realm have prescribed to the ecclesiastical courts their bounds and limits, so the Courts of Common Law have superintendency over them ... and in case they do exceed their bounds, the courts of common law will issue their prohibition to restrain them.'⁽²⁾

These bounds had been the subject of some controversy in the first

1. See below, Chapter IV.

2. R Burn, op. cit. p. 51.

half of the seventeenth century⁽¹⁾, but by the period under study, the occasions on which the temporal courts could interfere with the process of a case in the ecclesiastical court were fairly well understood. In the period of strife, Sir Simon Degge noted the prevalence of prohibitions:

'By the corruption of these latter times, they are grown very grievous to the clergy (in the recovering of their tithes and other rights) being too often granted upon feigned and untrue suggestions ... I think I may presume to say that where one was granted before Queen Elizabeth's time, there have been a hundred granted in this last age.'⁽²⁾

Quite simply, a prohibition, which could be issued in any of the King's common law courts, stopped any further proceeding in the ecclesiastical court. The temporal court would issue a writ on receipt of a plea from the complaining party that the inferior court was having cognizance of matters properly the province of the temporal court. The most common of these was on the question of a modus. If, in answering a libel alleging non-payment of tithes, the defendant alleged that a modus was payable in lieu of the tithe, then the case was not cognizable in the ecclesiastical court, for a question of title had been raised. The ecclesiastical court was not competent to determine the validity or otherwise of a modus, as this involved a matter of temporal right. It may well be argued, of course, that this restriction on the sphere of competence of the ecclesiastical court

1. See J E C Hill: Economic Problems of the Church esp. pp. 124-31.
 2. S Degge: The Parson's Counsellor with the Law of Tithes. Quoted in R Burn: op. cit. p. 230.

was a real benefit to a defendant, for he could reasonably expect a temporal court to judge his evidence in favour of a *modus* more leniently than an ecclesiastical court. Pleas that land was tithe free could also not be heard in ecclesiastical courts for the same reasons. A prohibition would be granted also if the tithe sued for was not tithable at common law but only by the custom of the parish. There were other minor occasions also, and it is not surprising that a leading authority on the conflict in the seventeenth century should have noted:

'It was a poor lawyer who could not get a prohibition with all those possibilities before him.'⁽¹⁾

Nor did the power of the temporal courts stop there. If a party to the suit disagreed with the decision reached in the ecclesiastical court he could appeal in the first instance to the archbishop's court, and from there to the King in Chancery, the King of England having during the Reformation supplanted the Pope as the final court of appeal in matters spiritual. In practice the chancery court appointed a high court of delegates:

'who judge according to civil and canon law, and revoke or confirm the sentence: and in these judgments given by the course of the civil law, the judges of the common law do acquiesce.'⁽²⁾

The temporal power, therefore, had considerable power over ecclesiastical jurisdiction. It should not be thought, however, that because of these impediments the ecclesiastical courts ceased to be used.

1. Hill: op. cit. p. 127.

2. R Burn: op. cit. p. 48.

After all, prohibitions had to be sued for, and appeals financed. Many litigants remained perfectly satisfied with the jurisdiction of the ecclesiastical court, and either did not wish or were not able to afford to prolong a case by transferring it to temporal jurisdiction. If the matters in dispute were clear enough, such action might only involve extra expense for the same result. There were many delicate legal and financial calculations to be made when deciding whether to apply for a writ of prohibition. Certainly, the suing of such writs did not mean that the ecclesiastical courts were short of business during the period under study.

Temporal courts were of two kinds. Common law courts were empowered to deal with matters referred to them as a result of writs of prohibition, but their work in this respect had declined by the period under study. The advantage for those wishing to establish customs was that they could institute a trial at law for the purpose. Thus, when Stephen Astbury and Edward Biddulph were cited by the impropriator of tithes in Stone (Staffs) to answer for their non-payment in the ecclesiastical court, they applied for a writ of prohibition. The case was heard at the Court of Common Pleas in Stafford in 1731, and a trial by jury at the Assizes was planned. No satisfactory conclusion could be reached, however, because of lack of evidence, and Astbury and Biddulph were only able to obtain the requisite evidence from the impropriator, John Jervis of Darlaston, by instituting a suit of their own in the Exchequer Court⁽¹⁾. Another, but little used, facility of common law courts was the writ of assize. The jury was

1. P.R.O.: E112/1282 No. 44.

used to prove a claimant's title to tithes. This device, naturally enough, was employed only when it was necessary to establish a title against another claimant, or against those who tried to show that an impropriator's right to the tithes was suspect⁽¹⁾.

For most practical purposes, however, the courts of equity were the arbiters of tithe suits in temporal courts. It was understandable that this should be so. By the period under study most tithe cases were instituted to discover the right to disputed claims - for example, the propriety of a modus or the validity of a claim to exemption. It was asserted that as a court of revenue, as well as a court of equity, the Exchequer had always had jurisdiction over tithe⁽²⁾, while the right of the court of chancery was acknowledged by 1575⁽³⁾. Throughout most of the period the Exchequer Court was used more than Chancery, although from the early years of the nineteenth century Chancery took over a certain amount of the work of the equity side of the Exchequer.

The procedures of both courts were remarkably similar. An issue was begun by preferring a bill⁽⁴⁾ addressed either to the Barons of the Exchequer or the Lord Chancellor, stating the cause of complaint and the names of those complained against. It was of the utmost importance that this bill was framed in precise legal language or the plaintiff ran the risk of being non-suited on one of many technicalities. Plowden noted nine distinct parts in the bill, all of which

1. F Plowden: op. cit. p. 277.

2. ibid. p. 380.

3. ibid. p. 379.

4. This bill was known as an 'English bill' to distinguish it from proceedings in the ecclesiastical court which until 1733 were conducted in Latin.

had to be framed precisely⁽¹⁾. A variety of defences were open to the defendant. If he wished the court merely to decide on the basis of the facts presented by the plaintiff, he would enter a 'demurrer' after which the court would move immediately to judgment. A 'plea' was a reply which argued that on the basis of the evidence presented by the defendant, no further answer was necessary. An 'answer' controverted some or all of the facts produced in the bill. Alternatively the defendant could put in a 'cross bill' to controvert or suspend judgment on the plaintiff's original bill⁽²⁾. It may well be imagined that any litigant embarking on an action in an equity court stood in immediate need of a skilful and experienced lawyer to guide him through the maze. It is not necessary further to elaborate on the technicalities of equity jurisdiction; but three points must be made. Firstly, the equity courts could order evidence from witnesses to be taken in the locality of the protagonists. Secondly, it became established that unless moduses were openly admitted in court, equity judges would not offer a judgment on their validity without a trial by jury, held generally at the local assizes. The hearing of a case would be suspended while the same evidence was reheard before a jury. When the jury's verdict was known, the equity court would proceed to its final judgment, unless the parties had by this time settled the issue between them. Finally, any appeal from the jurisdiction of the equity court could be made only to the House of Lords.

1. Plowden: op. cit. pp. 384-5.

2. ibid. pp. 392-4.

III

An exhaustive survey of all the technicalities of tithe law during the period under study would form a substantial dissertation of itself. Consequently it is intended to note only the most interesting and important matters which came under dispute.

Pre-eminent among these was the *modus*. The existence or otherwise of a '*modus decimandi*' was easily the largest single cause of friction between contending parties in tithe suits. From a distillation of tomes of evidence, case law provided certain guidelines for future litigants to follow. Plowden listed six tests which a claimant of a *modus* had to satisfy in order to prove his *modus* good. Each *modus* had to be fixed and invariable. It was no use to propose a *modus*, for example, varying with the rent of the land, or a *modus* which admitted of any equivocation as to the extent it covered. A *modus* of one penny for every house which had land attached to it was held to be invalid because the custom included a statement of the amount of land affected⁽¹⁾.

Secondly, the *modus* should be shown to be beneficial to the parson at the time of its being made. A *modus* was an ancient composition and presumably dated back to an actual agreement. The assumption must be, therefore, that a tithe owner would not have entered into an agreement detrimental to himself. A *modus* of $\frac{3}{4}$ alleged to have been paid in lieu of Painsley demesne lands in Checkley (Staffs) was held to be a bad *modus* because it included not only small tithes but grain, and

1. Travis v. Oxton. (East Ham, Cheshire 1775). Quoted in H Gwillim: op. cit. Vol. III, pp. 1066, 1081-2.

no such agreement was likely to have been made⁽¹⁾.

Alternatively, a modus could be declared invalid for precisely the opposite reason. As a modus was supposed to have existed beyond the limit of legal memory, so it must be sufficiently small to have been feasible in the twelfth century. Moduses involving shillings for a single crop, or one shilling in lieu of a milking cow were held to be "Rank", i.e. too large to have existed ~~since~~^{for} the limit of legal memory. Moreover, if the court of equity was satisfied that the payment represented a rank modus then it saw no reason to send the issue to a trial at law, and would declare its judgment accordingly. The eighteenth century provided many examples. In the case of Kennedy v. Goodwin (South Ockenden, Essex 1708) a modus of £4.10s. a year from a farm valued at £30 was held to be rank⁽²⁾ as was a modus of £48 from a farm worth £80⁽³⁾. Parochial moduses were brought under the same scrutiny. Moduses of 2s.6d. per acre for corn⁽⁴⁾ and one shilling per acre for hay⁽⁵⁾ were set aside: and it was held that the 'rankness' or otherwise of a modus was a matter of fact rather than case law. Each instance should be decided strictly on its probability as an original modus⁽⁶⁾.

1. P.R.O: E.112/892 No. 97 and 1282/No. 47.

2. Gwillim: op. cit. Vol. II, p. 708.

3. In Ekin v. Pigot, Quainton (Bucks). Chancery 1745. *ibid.* Vol. II. p. 783.

4. *ibid.* Bishop v. Chichester. Doultong, Somerset. 1787. Vol. IV. p. 1323.

5. *ibid.* Bate v. Hodges, Wareham (Kent) 1723. Vol. II, p. 645.

6. *ibid.* Vol. III, p. 1058; Bedford v. Sambell. 1775. Lord Chief Baron Smythe observed in setting aside a jury's decision on moduses for lambs and wool: "Wherever the payment approaches near the value it is a fact to shew that it cannot be an ancient modus ... As to the rankness of the modus for lambs and wool, such an objection used to be considered as a legal objection, but it is really a question of fact. The case of Gifford v. Webb decided only that

Three conditions remained to be satisfied. A modus could not be a smaller quantity of the tithable product compounded. It was, for example, invalid to plead that a tithe owner held a small meadow in lieu of the tithes due from a larger one. Also payment of one tithe could not discharge another. A modus of fourpence could discharge the tithe of milking cows, but the same modus could not discharge barren cattle at the same time. A modus of three pence in lieu of the milk of a cow, and one penny in lieu of barren cattle would have been acceptable, provided the other rules were adhered to. Finally, the modus had to be of equal duration with the tithe it was claimed to cover. In *Startup v. Dodderidge* in the Court of King's Bench the judgment laid down that:

'A modus ought to be as certain as the duty which is destroyed by it.'⁽¹⁾

In practice, during the eighteenth century, the defence of a modus could be easier than would appear likely from a study of the statutes. As has been said, the limit of legal memory was considered the operative starting point for a modus. Proof of a modus, it could therefore be argued, should include documentary proof of continuous and unvarying payment since 1189. In practice the courts did not ask for this. As the eighteenth century wore on, it appears that the courts of equity

such a modus was not bad upon the face of it but that it ought to be left to a jury. And in the present case, the jury ought to have given the objection to rankness its proper force." Lord Chief Baron Ward gave a similar opinion in *Twells v. Welby* (East Allington, Lincs) in 1780. *ibid*, Vol. III, p. 1192. Both cases came to the Exchequer Court.

1. Plowden: op. cit. p. 205.

became more lenient in accepting evidence of the invariability of modus payments. It is significant that Sir Henry Gough's counsel in the Claverdon (Warwicks) tithe dispute of 1785-6 should declare that a modus must have been in existence before 1570 when a statute was passed limiting the power of leasing clerical tithes⁽¹⁾. In practice, if the evidence of the oldest inhabitants in the parish together with receipts for a modus going two or three generations back combined to give a consistent picture of unvarying modus payments over a hundred, or even sixty or seventy years, then the chances were that a modus would be upheld in the equity courts. When the limit for evidence of the validity of moduses was reduced to thirty years in 1832, the legislature was merely following the lead given by case law for a considerable period. The importance of debarring ecclesiastical courts from judging the validity of moduses can thus be seen, as it is reasonable to expect that such courts would require more stringent documentary evidence over a longer period of time, before acquiescing in a diminution of spiritual rights or dues.

There could also be considerable dispute about whether tithes should in a particular situation be considered as 'Great' or 'Small'. As has been noted⁽²⁾, before the middle of the eighteenth century it was generally held that the dominance of a crop determined whether the tithe of it should be great or small. Thus, potatoes when grown in small quantities in individual gardens were considered as small tithes,

1. H Gwillim: op. cit. Vol. III, p. 1294.

2. See above, Chapter I, p. 13.

though they became great tithes when sown on the open fields. Lord Hardwick's decision in *Smith v. Wyatt* in 1742 dealt a severe blow to the certainty of this doctrine, and threw lawyers still further back upon the custom of each parish. In the chancery case of *Sims v. Bennett* in 1756-60 it was held that peas and beans should be considered as great tithes, which the Vicar of Eastham (Essex) could not claim, although this required a fairly free translation from the medieval Latin of the endowment of the vicarage which stated that the vicar was entitled to all tithes "praeter decimas garbarum, et faeni et molendini"⁽¹⁾.

Tithe of wood also caused immense problems in the courts. As Plowden remarked:

'There is scarcely one branch of tithes on which the books [of law] seem to be more contrariant.'⁽²⁾

In many cases ^{it was} ~~were~~ hard to determine whether tithe of wood when cut was tithable by common right, or merely by specific prescription. The usual answer given by the courts was that tithe was not due on wood which came from trees of more than twenty years' growth. Statutes from the fourteenth century were used to back up the point⁽³⁾. This did not, however, answer such difficult questions as whether wood growing in hedgerows was tithable, or whether the poles used in farming cut from ash trees were exempt. It was determined that firewood cut for the purposes of sale was tithable, as was tithe of wood made into charcoal. At one point, it appeared that the question of the ultimate

1. Gwillim: op.cit. Vol. III, pp. 874-888.

2. Plowden: op.cit. p. 135.

3. In 1371 (45 Edward III) reaffirmed in 1414. Gwillim op. cit. Vol. I, pp. 4, 15-16.

use to which the tithe was put was crucial in determining its tithability, but Lord Chief Justice Hardwicke specifically decreed that this was not so⁽¹⁾. The amount of litigation served only to make the issue more confused. Only when the custom of the parish was beyond doubt was the issue clear. Thus the Rector of Swinnerton (Staffs), a Dr Dives, was unable to obtain tithe of young wood felled in Swinnerton Park in 1724 because it appeared that by prescription the entire Staffordshire hundred of Pirehill was exempt from rendering tithe of wood. When the Court of Exchequer authorized a trial by jury to determine whether the custom was valid, the rector backed down and acknowledged its validity rather than incur extra expense when he could be fairly sure how the jury's decision would go⁽²⁾.

Perhaps the greatest change in the interpretation of tithe law and custom occurred over agistment tithe. This was a species of tithe not otherwise easily classified, payable on the value of keeping or depasturing sheep from shearing time till slaughter, on cows not yielding milk, from weaning time until calving, and on colts until the time that they were used in husbandry, as it was a strict rule that animals used exclusively for the facilitating of farming - as agents of growth and profit rather than the end products - were not tithable. As has been seen, in Staffordshire as elsewhere, agistment tithe was generally payable as small moduses⁽³⁾; but where moduses were not payable, agistment tithe could be exceedingly valuable. Until the middle of

1. In *Walton v. Tryon*: (Mickleham, Surrey, 1751): Gwillim: op. cit. Vol. II, p. 830.
2. P.R.O.: E.112/740 No. 75. See also: Hutton Wood: A Collection of Decrees by the Court of the Exchequer in Tithe Causes (4 Vols. 1798-9) B.M. 519 b. 19-22. Vol. II, p. 249.
3. See above, Chapter II pp. 56-7

the eighteenth century, the invariable rule was that no tithe was payable from any land which had previously paid any other tithe in the same year. Judgment in the case of *Chapman v. Keep* (Exchequer 1742) had explicitly stated that agistment tithe was not due for sheep depastured on land which had paid tithe of hay or corn in the same year⁽¹⁾. Thus it was confidently believed that no agistment tithe could be claimed from land which had previously been mowed for hay or ploughed for a corn crop. In 1774, however, Rev Thomas Bateman, a clergyman with the resources to fight a protracted legal action, being chaplain to the Duke of Gordon, and Vicar of Whaplode (Lincs) challenged the previous rulings in claiming agistment tithe from sheep and barren cattle. The Exchequer Case, *Bateman v. Aistrup*, became a "cause célèbre" in tithe law, instituting an apparently new principle - tithing the same land for more than one crop or profit in the same year. Bateman wrote a prolix pamphlet proudly proclaiming his triumphs⁽²⁾, and at the end of the eighteenth century, several cases were instituted by vicars and rectors seeing in the Bateman case a convenient way of increasing their own income, by citing recent precedent.

Cases such as Bateman's served to show that there were few certainties in the interpretation of statute or case law concerning tithe. The large number of learned works on tithe legislation showed at once

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1. Gwillim: op. cit. Vol. II, p. 779. The Rector of Stratfieldsea (Hants) failed to establish his claim for agistment tithe 'of sheep fed on stubbles and fields mowed'. See also the cases of *Ayd v. Flower*, Sturton (Notts) 1717. *ibid.* Vol. II, p. 613 and *Fisher v. Leaman*, Hemycok (Devon) 1720, Vol. II, p. 626. These applied specifically to meadow ground tithed in the same year for hay.
 2. T Bateman: A Treatise on Agistment Tithe (1778) B.M. 518 i. 24.

the magnitude of the problem and the different angles from which it could be approached. Unforeseen pitfalls lurked in the most apparently simple case. Cases concerning Staffordshire litigants prove that on many occasions, the parties preferred to work out their own solutions, rather than let the law take its lengthy, and sometimes capricious, course.

CHAPTER IV: The Law's Redress: Causes in Tithe

Tithe suits, instituted in the ecclesiastical or equity courts, remained a common feature of legal proceedings throughout the period. The evidence from Staffordshire, however, suggests that suits were rather more numerous in the first half of the period. Between 1700 and 1836, no fewer than 559 tithe suits were begun in the Diocesan Court at Lichfield and 136 were begun in the Court of the Exchequer⁽¹⁾. 398 (71%) of the ecclesiastical suits were begun in the period 1700 to 1780, while 98 (72%) of the exchequer suits were begun within the same time limits. If the Staffordshire experience is typical, therefore, and an examination of relevant exchequer material suggests that it is, the interesting paradox results that in the period when agitation against the tithe system reached its height at the end of the eighteenth century and the beginning of the nineteenth, tithe prosecutions were becoming rather less common than previously⁽²⁾. Unfortunately, lack of records precludes an analysis of the tithe suits

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1. L.J.R.C.: Class B/C/5 and Additional Series. P.R.C.: E/112/739, 740, 891, 892, 1044, 1045, 1281-1284, 1969-1976, 2242, 2334. In view of the state of the Diocesan Cause Papers at Lichfield, many of which had been kept until recently in a haphazard fashion, it is possible that the total number of ecclesiastical cases has been slightly understated because of the possibility that certain citations have been lost.
 2. This observation does not lose sight of the fact that the Exchequer lost a certain amount of its jurisdiction to the Court of Chancery at the beginning of the nineteenth century, preparatory to the winding up Equity side of the exchequer in 1841. It should be noted also that in the early 1830's there was a flurry of legislation initiated to forestall the curtailment of tithe owners' rights of prosecution currently being discussed and legislated in Parliament. See above Chapter II, p. 46 and below Chapter IX, p. 337-339.

heard before Justices of the Peace, but until 1813 they were given cognizance only of few small cases - the maximum tithe claim being 40/-⁽¹⁾. There was no obligation on those who claimed tithes to have redress only before the Justices; and the experience of the Quakers would tend to support the conclusion that until about 1770 at least Justices were not greatly used to determine tithe cases⁽²⁾. The vast majority of tithe cases, therefore, were held in the ecclesiastical court and the equity courts, predominantly the exchequer. Although it seems at first sight that the ecclesiastical court was much more used than the exchequer, despite the limitations on its jurisdiction, it frequently occurred that, to save expense, a plaintiff would cite numerous defendants in the same exchequer action⁽³⁾. Individual citations were generally issued to separate defendants in the ecclesiastical courts.

Geographically, tithe cases seem to have been spread throughout Staffordshire. Tithe cases were heard in the ecclesiastical courts from 91 separate parishes in the county, more or less evenly divided as to geographical location and crops predominantly grown. The Staffordshire sample would suggest that these factors were of minor importance in determining whether the social tensions caused by the tithe system would break into legal action. Permanent factors were of much greater importance. Given that many tithe owners and incumbents were happy to establish good relations with tithe payers at

1. See above, Chapter III, p. 78.

2. See below, Chapter VI, p. 194-195.

3. See for example, P.R.O.: E112/739 No. 53, Thomas Hall, Vicar of Bushbury in 1695, cited seven men to deliver a complaint of non-payment of tithes in the parish.

the cost of not extracting their full tenth⁽¹⁾, it followed that many new incumbents would see the matter in a different light. John Simpson, Vicar of Alstonfield from 1822 took a very different view of his obligations from his easy-going predecessor. He began a search through the parish records to ascertain the validity of many of the moduses claimed by his parishioners. He also took legal advice as to the best means of recovering what he regarded as his lost rights; and built himself a strong case which he probably used as a bargaining counter with his parishioners when the enclosure of Alstonfield was discussed. At all events, he was able to treble the value of his living with the allotment of land he received at enclosure in 1839⁽²⁾. Had enclosure not been in prospect, Simpson's correspondence leaves no doubt that he would have taken his case to law. When John Tomlinson bought the impropriation of Stoke-on-Trent, he did so specifically to make a profit out of the transaction by reviving long dormant claims to tithe. To this end he instituted no fewer than 14 tithe suits in the diocesan court in 1821 and 1822⁽³⁾. Defendants were asked to account for tithes of calves milk and agistment - "tithes of different descriptions never before paid", as defendants John and William Ridgeway asserted. The Ridgeways asserted that a modus was payable in lieu of the tithes of cows and calves, "but owing in all probability to the

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1. There is considerable evidence that this was the case. See above Chapter II *passim*.
 2. L.J.R.O.: B/V/6: Documents preserved with the terrier of Alstonfield. Also: B/A/19: Letter Book 'B' pp. 294, 442 and 478. For further details, see my article: Tithing Customs & Disputes, the Evidence of Glebe Terriers in Agricultural History Review, 1970, pp. 17-35.
 3. L.J.R.O.: B/C/5: 1821 - 1822 - 3.

smallness of the composition, it was neither very regularly nor very generally collected, expecially of late years"⁽¹⁾. This only played into Tomlinson's hands, as the modus would have to be supported by some evidence of continuous payment if it were to be considered valid. Asserting a right to a new tithe also often involved legal proceedings. John Dearle took them in Baswich in 1741-2 when he laid claim to tithe of potatoes for the first time⁽²⁾. When Henry Cary, Vicar of Abbots Bromley since 1797, determined to assert his right to tithe of turnips, in 1807, he instituted an action against one of his parishioners, James Wood, for non-payment of the tithe on three acres of land. Although the defendant argued that no tithe was payable, Cary won his case. Wood had to pay £10 as double value of the tithes claimed from 1797-1806 together with the costs of the case, which amounted in Cary's case to £52⁽³⁾.

Cases, therefore, were particularly likely when a new incumbent laid claim to old tithes, or when a tithe owner wished to set on record his right to tithe a particular crop which had not been previously taken. Without doubt, however, the most frequent cause of tithe litigation was the modus. The wide scope of the modus, and its deleterious effects on tithe income have been noted elsewhere⁽⁴⁾, and it would have been surprising had modus questions not been the subject of much litigation. The economic incentive was obvious: but also the legal position was so unclear that separate cases for each parish and each modus were the

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1. S.R.O.: D239/M 4621-3.
 2. See above, Chapter II, p. 46.
 3. L.J.R.O.: B/C/5: 1807.
 4. See above, Chapter II, pp. 53-59.

only means of reaching a definite conclusion. Of 75 replies to the libels of plaintiffs from Staffordshire in the court of exchequer, no fewer than 45 included a modus payment either as the sole or major part of the defence. Significantly, there were also two cases brought by parishioners as plaintiffs to defend moduses which they believed likely to come under attack. Thus in 1710, the guardian of Neale Hutchison of Stowe, near Lichfield, brought an action to defend a farm modus of 2/- payable to the prebend of Weeford⁽¹⁾. The lessees of the prebendary, Henry Jackson and Jonathan Mallett denied the existence of the modus, and the court issued a commission to examine witnesses. Eleven witnesses were examined for the complainant, and seven for the defence, one of whom, Anthony Nicholls, stated that when, from 1683 to 1696, he occupied the land in question, he paid the tithe farmer the 2/- modus each year. When, however, he became the tithe farmer himself in 1705 he demanded tithe in kind from the occupier and succeeded in getting a payment of £1. 2. 6⁽²⁾. This fairly brazen evidence was apparently considered of more weight, for the plaintiff's case was dismissed, leaving the modus wide open to attack⁽³⁾.

Much more common, of course, was the demand for tithes to ~~be paid~~, ~~being~~ met by a defence which stated that no tithe was payable because of the existence of a modus. When in 1695 Thomas Hall, Vicar of Bushbury since 1692, instituted a suit against six substantial land-

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1. P.R.O.: E 112/892 No. 94.
 2. P.R.O.: E 134/10 Anne/M 4.
 3. P.R.O.: E126/20 p. 1.

owners in his parish, each of them alleged that tithe in kind was not due, because of the existence of farm moduses. John Green stated that there was a modus of 14/- covering the hay and small tithes of the 120 acres in his occupation. The other defendants insisted on similar payments⁽¹⁾. The 'onus probandi' in such cases was on the defendants. They had to show evidence of continuous payment of the modus sufficient to satisfy the court. If the evidence allowed any manner of doubt as to the question, then the court would refer the issue to a trial at the local assizes; a course of action which had long been seen as highly prejudicial to the rights of tithe owners. The 'Church of England Bulwark and Clergyman's Protector' was to declare in 1828:

"Of all horrors few can exceed this! It being notorious that juries as tithe payers, have a very strong bias against the rights of a tithe owner."⁽²⁾

The defendants of a tithe suit in the exchequer might feel that they stood more chance by exhibiting a cross bill, calling the original plaintiff to answer various allegations. The Bushbury tithe case developed in this fashion. In May 1696, the defendants of Thomas Hall's suit entered a cross bill in which they took the opportunity of stating their case. They alleged that the vicar and his patron, James Grosvenor, were "combining and confederating together" to break ancient moduses, apparently at the instigation of the patron, who

1. P.R.O.: E112/739 No. 53.

2. "The Church of England Bulwark and Clergyman's Protector", Vol. I, 1828, p. 332.

instructed Hall after his induction to accept no further moduses⁽¹⁾. Anticipating the use which could be made of the vicar's account books, they stated that any variations from the normal modus payments were free-will gifts, and not tithe payments, such as a "Load of Coal for fewell in his house". They attempted also to nullify a further possible weak point in their defence by stating that the vicar and patron knew that the old estates had been much divided, so that it was now very difficult to ascertain their precise limits. The plaintiffs knew that

"it would require much time and trouble for your Orators to collect and gather such a number of evidences"

of the break up of the estates upon which the moduses were claimed.

Hall had already instituted cases in the diocesan court, and now threatened further actions. The defendants did not fail to point out a further point of great importance to the continuance of litigation. They stated that Hall:

'Threatens. that since his said Patron is at the charges he will weary out your orators and other the Parishioners of this said Parish with multiplicity of suits in divers Courts, And either ruin them or destroy the said Moduses.'

It will be argued that the question of cost could often be more significant than the evidence presented⁽²⁾.

One suit which was instituted in 1702 to defend a modus made mention of another possible device to break a supposedly ancient modus. Henry

1. P.R.O.: E112/740 No. 64.

2. See below, pp. 122-146.

Walker of Stafford bought 153 acres of land in the parishes of Draycott and Stafford, having been assured that the land he was purchasing was exempt from tithe because a modus of $3/4$ per annum was payable to the rector. Walker leased the land to a William Gower but a dispute arose between them. Walker alleged that the Rector of Checkley, Nathaniel Taylor, used this dispute to strike a bargain with the tenant against the long-term interests of the landlord. Taylor persuaded Gower to permit a suit for tithes to be brought against him. Gower would put in his answer, but Taylor made it worth his while not to continue the suit by agreeing:

'that he would Lett him Compound for little or nothing for the Tythes or ... (the) purchases Lands ... and would take no Tyth in kind during the said William Gower's time.'⁽¹⁾

When the lease fell in and Gower gave up the land, Walker would be charged with tithe in kind. If he attempted to proclaim the modus of $3/4$ then the composition between Gower and Taylor would be brought in as evidence that the modus so far from being "fixed and unalterable" as the courts required, had been broken, and accepted as broken, by the last tenant.

If what Walker alleged in his libel were true, it is not surprising that a lengthy and bitter tithe cause should ensue. A combination of the two most common reasons for dispute - personal conflict and moduses - was present. An anonymous correspondent to Cobbett's Political Register in 1808 noted, though with much exaggeration, the way in which

1. P.R.O.: E112/891 No. 2.

many disputes were begun, emphasising the peculiarly vulnerable position of a new incumbent:

'In 99 cases out of 100 of the disputes that occur between the owners and tythe payer, is not the main cause of them to be found in the unjustifiable attempts on the part of the latter to beat down the other and compel him to accept a very inferior and unequal price for his tythe? It is almost universally true that when a new incumbent appears in a parish a combination of farmers is immediately formed to harrass him into an acceptance of their own terms: a natural feeling of resentment against oppression frequently urges the tythe owner to resist such attempts and he resolves to take his tythes in kind ... And so the quarrel continues with mutual aggravations.'⁽¹⁾

Pressure could, of course, be applied and machinations contrived, by both sides and the common picture of the tithe grasping parson or impropiator should be balanced by the provocations offered tithe owners by those who were determined to avoid any payments which they were not positively compelled to make. One vicar, John Darwall of Walsall, anxious to recover a customary payment from a miller in the town reported to his proctor in the ecclesiastical court that the miller had informed him:

'he did not pay the Parson any dues in the Parish he came from till he put him in the Court and made him.'⁽²⁾

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1. Cobbett: Political Register, Vol. XIII, 1808, pp. 341-5.
 2. L.J.R.O.: B/C/5: 1785 (A.S.) Darwall to Buckeridge, 23 December 1783.

Tithe cases could equally well be provoked by ~~both~~^{either} sides, and the fact that the tithe owner had to make formal complaint to the courts does not necessarily imply that the plaintiff was the real cause of legal action. On some occasions, he had little choice.

The suits from Staffordshire indicate that the documents and other evidence required to support a claim for tithes, or to attack a modus, varied little from case to case, or from court to court. The evidence of the glebe terrier as to the rights of an incumbent of a particular parish was always of importance. As Lord McDonald said in judgment at Warwick Assizes in 1794:

'A terrier ... is an instrument well known in the law. By the canons, it is directed that an enquiry shall from time to time be made of the temporal rights of the clergyman in every parish and returned to the registry of the bishop, the proper guardian of those rights. That return is called a terrier and has authenticity from being found in the proper place.'⁽¹⁾

That well known Staffordshire tithe litigant, John Tomlinson, Rector of Stoke-on-Trent, was careful to discover the evidence of the terriers. He and his brother wrote to the Diocesan Registrar, John Mott, in 1830:

'Cliffville 25 November 1830

'Dear Sir,

We send you on the other side a list of Terriers relating to Stoke Rectory, of which we want copies in order to produce in Evidence under a Common Suit of Chancery for Examination of

1. In Miller v. Forster: F Plowden, op. cit. p. 328.

witnesses in one of Mr. Tomlinson's Tithe suits - and we should feel particularly obliged to you if you would allow the copies to be made immediately as Mr. F. W. Tomlinson will (be) in Lichfield all Saturday next in his way to Town, with a view to examine the Copies with the original Terriers in the Registry, in order to be able to prove them. We are aware that the notice is short and regret that we are unable to give you more time; but we hope you will oblige us by extra expedition in this instance ... We shall also want your Certificate as to the Incumbents of Stoke for the last 140 years.

We remain, Dear Sir,

Yours faithfully,

Jno. & F. W. Tomlinson.,⁽¹⁾

The letter books of John Mott reveal that he was frequently asked by prospective litigants to search the terriers for evidence. This he was pleased to do for a usual fee of £2.12.6 for search and copy⁽²⁾. Mott's deputy, John Haworth, wrote to George Graysbrook in 1830 about Easter offerings demanded in Kingswinford:

'I have Search (sic) through the Terriers in the Registry and find that the amounts varies, respecting the husband and wife, but with respect to the Servants they are as you stated 4d. for every Man & 3d. for every Maid.'⁽³⁾

Account books and receipts for tithes or moduses were similarly

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1. L.J.R.O.: B/V/6: Stoke on Trent. Letter preserved with the terriers.
 2. L.J.R.O.: B/A/19: Letter Book 'D'. Mott to Staplyton, 6 Nov. 1830.
 3. ibid.: Letter Book 'C'. Haworth to Graysbrook, 22 February, 1830.

very important, for if a plaintiff could show that payments other than those claimed as a modus had been received he would stand a very good chance of winning his case. Regular and unvarying payment was of the essence, and the Rector of Norbury noted, no doubt in anticipation, in 1698:

'The general part of the Parish was anciently divided into eight-twenty plow land, the smallest of them paying for their tyth hay 2d., 4d., 5d., 6d., some more and some less as their custome hath been. Some have neglected to pay their usual customs which may prove in time to the breach of their custome.'⁽¹⁾

The complainant without account books or similar evidence could have great difficulty in establishing his claim. The Curate of Cheddleton, Thomas Stonier, stated in his exchequer complaint of 1723 that he wished to claim "severall Tythes and Tyth Rents set apart for the maintenance of a Curate or Vicar" but was uncertain as to which amounts he should claim because the "deeds and writings" were "by some negligence lost or mislaid"⁽²⁾. The defendant, William Bagnall, pointed out in reply that the curate had no right to take the tithes of his estate. Such payments as he had made were in the nature of a voluntary gift. His father and grandmother before him had known the precarious financial state of Cheddleton and, being regular church goers, had given sums of 10/-, 15/- or £1, but always as a free gift. In the same charitable spirit they had on occasion met some of the curate's small debts; but the defendant was not prepared to acknowledge an

1. L.J.R.O.: B/V/6: Norbury 1698.
2. P.R.O.: E112/1044 No. 33.

obligation to pay tithes.

In the same year a syndicate of substantial defendants in High Offley opened a suit in the exchequer to defend various small moduses against the attack of their vicar, John Edwards. The defendants alleged that Edwards had only been successful in a previous suit in 1720⁽¹⁾ because he had deliberately chose to cite "such Occupyers of Land only over whom he had an Influence"⁽²⁾. These occupiers put up a poor defence, alleging only that the vicar was not entitled to collect the tithes because he had not taken an oath of allegiance to the Hanoverian monarchy, and not defending the small modus payments for milk, herbage, colts and garden produce⁽³⁾. This the new defendants were determined to do, seeing their own advantage threatened by an adverse decision. They continued:

'Your Orators do expressly charge that itt doth most plainly appear by severall account Books of the several Vicars ... that the severall Modus have been always pay'd to and Excepted (sic) by the Vicars of the said Parish for the time being.'

Edwards, however,

'hath gotten the said Books into his Custody and doth absolutely refuse to produce the same.'⁽⁴⁾

Edwards replied only that:

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1. For the decree of which see P.R.O.: E/126/22 & 126/23 p. 174. The libel and reply does not appear to have survived.
 2. P.R.O.: E/112/1044 No. 38.
 3. P.R.O.: E112/1045 No. 48.
 4. P.R.O.: E112/1044 No. 38.

'by means of several misfortunes ... (he) is now reduced to such unhappy Circumstances that he is not at present able to bear the Charge of a Law Suit.'⁽¹⁾

With their superior financial resources the parishioners were able to succeed, by providing receipts for the moduses they claimed. The parishioners later addressed a petition to the Bishop of Lichfield and Coventry, alleging that as a result of the "several vexatious lawsuits" there had been "a great decay of Christian piety" in the parish⁽²⁾. Feelings apparently ran high also because Edwards was strongly suspected of harbouring Jacobite sentiments, and refused to read prayers on the anniversary of George I's accession.

Other evidence which was often extremely useful in establishing a tithe claim was the evidence of "ancient parishioners" who had resided in the parish over a long period and could remember the practices and customs of previous incumbents. Thus, when John Harvey, impropriator of tithes in Gayton, instituted a suit in the diocesan court for tithes of various sorts from Edward Smith in 1801, the evidence of 84-year-old Ellen Dawson of Gayton was taken. She stated that until the time when Harvey became impropriator, there had been a custom of 1½d being paid for each cow and a similar amount for each calf, "but no such payment has been made for the last twenty years". She could never remember tithe hemp or wool being collected:

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1. P.R.O.: E112/1045 No. 48.
 2. W.S.L.: M68.

'The Tithe Gatherer(s) used to threaten to gather Tithe Pigs, Wool and Lamb in kind, but that they never did.'⁽¹⁾

Similar evidence had been produced in the Austrey (Warwicks) tithe case of 1742 when Hon. Michael Newton, impropiator of the great tithes of Austrey claimed tithes from the glebe land let out by the vicar to William Fisher. Fisher denied his liability to render tithes to the impropiator, and two of the oldest inhabitants of the parish, John Smith 79 and Michael Harrison 80 ('as near as he can tell') testified for him that vicarial tithe had always extended to all tithe of glebe land. Smith said that he remembered that in his youth a previous vicar, named Shakespeare, had collected all tithes from his tenants when he let out the glebe, and also during the incumbency of a subsequent vicar, Rev. Wainwright:

'the Tyth's of the Glebe were deemed and reputed to belong to the said Vicar and not to the Impropiator.'⁽²⁾

Such ancient inhabitants with conveniently long memories were not, of course, always to hand. It is, however, noticeable that men of advanced years testified frequently in tithe cases. In the protracted Checkley tithe case, already referred to⁽³⁾ evidence was taken by special depositions at Uttoxeter on 17 October 1717. Thomas Walton, aged 50, stated that he had acted as tithe gatherer for Nathaniel Taylor and had taken tithe in kind from the lands presently in dispute, before Taylor and Gower agreed on a composition. John Hayne, a

1. L.J.R.O.: B/C/5: 1799.
 2. L.J.R.O.: B/C/5: 1741-2.
 3. See above pp. 100-101.

gentleman aged 56, had been given the task of ascertaining the strength of the defence which William Gower could put up. Accordingly, he had questioned the most "ancient" inhabitants about the customs of the parish in order

'to get the best information he could how farr it wold be safe in defending the sd. Suite by insisting on the sd. Modus.'

According to Hayne, those inhabitants had told him that tithe in kind was payable for corn growing on the Painsley demesne. This, if true, would invalidate the conspiracy theory alleged by Henry Walker in his libel of 1702, but Walker himself introduced twelve witnesses who all asserted, like George Gough, a yeoman of Himley, aged 60, that no tithe in kind was payable. Gough stated that a previous rector of Checkley, John Sherratt, had demanded tithe from the same land that was now in dispute. The then tithe owner, Philip Draycott, refused to pay it, and after a long conversation Sherratt:

'said he would never Demand any more of him or to that purpose.'⁽¹⁾

II

Although the general contention was that clerical tithe owners were more easily satisfied with their receipts than laymen⁽²⁾, the evidence from Staffordshire does not suggest that the clergy eschewed the courts of law. Once again, personality was a significant factor as was the ability to meet the costs of the proceedings. Not surprisingly, the ecclesiastical court, despite the limitations on its effective

1. All the foregoing evidence is to be found in P.R.O.: E134/4Geo I/M8.
2. See above, Chapter II, p. 59-63.

jurisdiction, was a favoured court for clerics wishing to establish tithe claims. Of the 550 cases in the diocesan court at Lichfield in which it has been possible to distinguish the protagonists with certainty, 322 were instituted by the clergy and 228 by lay impropriators and their lessees. Somewhat surprisingly, considering their usually smaller income, no fewer than 200 cases were brought by vicars or curates, as against 122 by rectors. Of course, this needs to be balanced by the fact that there were fewer rectories than vicarages and curacies⁽¹⁾. None the less rectories were generally of greater value, and a large number of curacies were not financed by tithe but by glebe and specific endowments from their patrons.

In the exchequer court the position is reversed. The majority of cases were brought by laymen. Of the 130 identifiable cases, 75 were brought by laymen and 55 by clerics. Subdividing these categories, however, reveals that the largest single category was that of lessees of tithe who brought 47 cases. Impropriators in their own right brought 28, two fewer than rectors, while vicars brought 24. It would be unwise to draw too many conclusions from these figures, but the predominance of the lessees, even in such a relatively small sample of cases, seems significant. Obtaining the tithes as they did in a straight money transaction and holding them for a limited number of years they would obviously be concerned in a more urgent way to make a profit out of their investment.

It is striking that comparatively few of the cases begun in the

1. Appendix II, pp. 421-5 indicates the precise balance between types of living.

courts were heard to a conclusion. In only 14 of the cases instituted in the Lichfield diocesan court is a sentence published with the cause papers. This is certainly fewer than the actual number of sentences, as many papers have clearly been lost. It is obviously hazardous to draw conclusions from such a small sample, but it does appear that more often than not when a case was heard to its conclusion the tithe owner would be on the winning side. Eleven of the fourteen cases mentioned were determined in the tithe owner's favour. This sample would appear to confirm the conclusion of an anonymous defender of the church establishment who wrote in 1782 that of 700 cases brought by the clergy in Westminster Hall which had come to a decision 660 were in their favour⁽¹⁾. The decisions of the courts, however, were comparatively unimportant when set against the large number of cases which did not reach judicial conclusion. It seems clear that protagonists sought to minimize legal costs by seeking an accommodation of issues by one means or another before the legal process wound its tortuous way to a conclusion. Indeed, many cases were won by the tithe owner without his having to fight. The letter books of John Mott, Diocesan Registrar at Lichfield, clearly indicate that a mere citation could be enough to bring about payment from a defaulter. Mott's deputy, John Haworth, replied to Mr George Graysbrook in February 1830 informing him of the correct mode of procedure for recovering Easter dues:

'I beg to state that the mode of proceeding is by citing the parties

1. Anon: Observations on a General Commutation of Tithes for Land for a Corn Rent 1782. (Goldsmiths Library GL 1782).

in the first instance and on their giving an appearance to give in a short plea stating the Amount of the Family and the custom of the Parish in the payment of a certain sum per head to the Rector as Easter Dues. In these cases the Question seldom arises at a plea - the Citation generally brings them to their senses, and they quietly pay the sum claimed with the Costs.⁽¹⁾

Doubtless many cases were similarly settled when the sums demanded were not large and when the prospect of costs of many times the amount of the suit daunted those who had refused payment. Only if there was some special "animus" on one side or the other would a case develop with ruinous costs mounting on both sides. It has been said that the uncertain nature of tithe law and custom could often conduce to the development of such a spirit, and it is equally true that some extraneous grudge could find useful vent in a tithe case; but the Staffordshire evidence suggests that most contestants either immediately wished to settle matters as quickly and inexpensively as possible or soon came round to this opinion when they saw to what excesses tithe litigation could lead. This is the most likely explanation of the fact that so many more citations remain than evidence of subsequent litigation. Of course in suits concerning very small amounts, Justices of the Peace were able summarily to hear the dispute and resolve it, and Mott informed Rev. William Hickins, Rector of Ashley, in 1829 that most cases involving Easter dues were heard by local

1. L.J.R.O.: B/A/19 Letter Book 'C' Haworth to Graysbrook 6 February 1830.

Justices of the Peace⁽¹⁾.

Mott often found himself in the position of acting as agent for Staffordshire clergymen anxious to recover their "just rights". His method of doing so was to point out, or hint at, the expenses that a long case would involve. He wrote on behalf of the vicar of Lapley to a recalcitrant parishioner, Charles Brunion:

'I am instructed to commence proceedings against you for the recovery of seven pounds due to Rev. M.Ward, Vicar of Lapley, for balance of composition for Tithes. Anxious to avoid expensive litigation I have deemed it right to give you this notice that if the above amount is paid to Mr. Ward, or remitted to me within ten days, no further steps will be taken, otherwise I shall comply with my instructions.'⁽²⁾

He wrote in similar vein to a Mr Beech in Swinnerton who had refused to render his tithes to the rector:

'I trust that you will come over and make some arrangement about the payment of tithes & costs; otherwise you will oblige the plaintiff to plead, the costs of which will fall on your shoulders.'⁽³⁾

By such means, it was possible to stop many cases even before they were properly started, and to terminate others at a very early stage. Certainly many cases were terminated between the stage in the ecclesiastical court of issuing a citation and making a formal plea. It should

1. L.J.R.O.: B/A/19 Letter Book 'B' Mott to Hickins. 12 November 1829.
 2. *ibid.* Letter Book 'H'. Mott to Brunion 5 November 1833.
 3. *ibid.* Letter Book 'E'. Mott to Beech 28 June 1831.

be noted also that, with the legal expertise of the Diocesan Registrar so readily to hand, the Staffordshire clergy were in a strong position to enforce their demands against individual and poorer parishioners who refused to pay small amounts. The Registrar acted not only as a persuader of the unwilling, but also as counsel to the clergy on intricate details of tithe law, advising them how best to prosecute their actions. Such legal expertise was beyond the reach of most small tenant farmers or householders. Against leading parishioners, the substantial landed interest, or those who were supported by them, however, the clergyman's position, as will be seen, was far less strong.

Once the case was under~~w~~ay and the position of plaintiff and defendant staked out in their respective libel and reply, it still remained possible for it to be suspended or terminated while external negotiations went on with a view to summary settlement. One of the commonest means was for the defendant, seeing how the case was going, and advised by his attorney on the strength of his evidence, to recognise the right of the plaintiff to at least some of the tithes he was claiming, and to offer a sum of money as satisfaction for his grievance. This offer, known as a tender, if accepted as adequate by the plaintiff, would end the case forthwith. Thus when an action in the exchequer between the Vicar of St Michael's, Lichfield, Edward Holbrooke, and two parishioners, John Mansell and Thomas Snape, was in prospect in 1750, the defendants took the opinion of learned counsel, Mr Wilbraham, who reported that although previous tithe owners had required tithes only of corn and hay, the vicar had a right to demand

tithe calves and milk in kind. Thus apparently convinced of the hopelessness of their cause, both Mansell and Snape determined to cut their losses and make the best settlement they could. Mansell tendered:

'For 2 years Herbage for lands graised by him within the Prebends of Freeford and Itchington in the parish of St. Michael with unprofitable Cattle at 7s. a year

due at Michaelmas last 0.14.0

For his share of the Costs of filing

a Bill in the Exchequer 1.10.0

1.10.0
£2. 4.0 , (1)

Snape tendered £2.10.0 and both tenders were accepted by the vicar in November 1750. The case was at an end.

Some tenders explicitly stated that they were made "to avoid disputes or any further Expense to be made in this Cause"⁽²⁾. Tenders in the ecclesiastical court, of course, had to take into account the fact that the court could decree double value of the tithes to be taken. Thus, the proctor of Ralph Burgess in a case for Caverswall, in 1815, tendered £5.5.0

'being double the value of the Tithes of hay upon a certain field of land called the "Town Meadow Croft" in the years 1809-11.'⁽³⁾

The acceptance or rejection of the tender was entirely at the discretion of the aggrieved party. He would reject the offer if he believed that

1. S.R.O. D(W) 1851/4/20.

2. Tender at Dronfield (Derbys) 16 June 1747. L.J.R.O.: B/C/5. 1747-8.

3. L.J.R.O.: B/C/5: 1812-3 - 1814-5.

it did not represent the equivalent of the injury sustained, or, more sinisterly, if he considered that the continuance of the case to the bitter end would provide sufficient punishment for the crime of not rendering tithes. John Mott advised George Graysbrook in 1830 of the state of the case *Hinde v. Wright and Holt*:

'I beg to acquaint you that an appearance was this morning given by the above defts. when they tendered 6d. as the Amount due for Easter Dues and submitted themselves to the Judgment of the Court. It was afterwards agreed that the Tender should be taken and that they should pay a sum on account of Costs ... I considered the parties would be sufficiently punished by this Arrangement & consequently the Suits will be dismissed on the next Court Day.'⁽¹⁾

A writ of prohibition terminated a case only in the ecclesiastical courts. It could be sued at any stage in the proceedings, but might well be held until the defendant became sure that the case would go against him. The writ would be issued on application to persons who stated that the evidence before the church court contained matters concerning prescriptive or customary payments. The writ issued to the chancellor of the Lichfield Court in 1736 to prohibit further hearing of a tithe case from Wem (Salop) is typical. It addressed the court in far from flattering terms, and portrays a man entrapped in the unjustifiable machinations of the Court Christian:

'George the Second by the Grace of God of Great Britain France and Ireland King ... to the Worshipfull Richard Rider, Esq. Batchelor of Laws ... Greeting. It appears to us upon the

1. L.J.R.O.: B/A/19: Letter Book 'C' Mott to Graysbrook 2 March 1830.

pressing Complaint of Thomas Barnes that all and all manner of Pleas of and concerning Debts contracted or Trespasses made, done or to be done or arising within our Kingdom and the Cognizance of such Pleas and Business to us and our Crown specifically belong and appertain and by the Common Law of our Kingdom ought to be determined and discussed in our Temporal Court and not ... before any Spiritual Judges ... notwithstanding which one Robert Eyton not ignorant of the premisses but designing and interceding him the said Thomas against the Laws of our Kingdom unjustly to vex & oppress us and to disinherit and draw cognizance of a plea which belongs to us and our Crown to another Tryall in the Court Christian, hath caused Competent Judge in that behalf ... We therefore being willing to maintain the Rights of our Crown & the Laws and Statutes aforesaid as we are bound by oath do prohibit you firmly enjoyning you that you do no longer hold Plea before you against the said Thomas concerning the premisses nor in any wise molest or aggrieve him on Account thereof. And if you have pronounced any Sentence against the said Thomas on this Occasion that you and every of you acquit and absolutely discharge him therefrom on pain of Incurring the Punishment due to the Violators of our Laws.⁽¹⁾

The writ which stopped proceedings in the Stowe tithe case, Dawson v. Spencer, in 1813 alleged that although Spencer had an answer to the plea of non-payment of agistment tithe,

1. L.J.R.O.: B/C/5: 1736. Writ of prohibition among the documents: Eyton v. Barnes.

'and offered to prove the same by indisputable evidence ... yet that the aforesaid spiritual Judges altogether refuse and still do refuse to admit or receive the same plea allegation or proof and endeavoured with all their might to compel the said George Spencer to pay the said monies ... and daily threatened to condemn the said George Spencer of and upon the premises in contempt of us and of our laws to the great damage and injury of the said George Spencer and against the course of law of this Realm.'⁽¹⁾

The writ of prohibition, therefore, left the plaintiff with two choices. He could begin the case again in a temporal court - usually an equity court - or he could let the case drop. The latter action seems to have been more common than might at first sight have appeared likely. A new case meant an entirely new, and possibly unforeseen, set of expenses, the hiring of a new counsel, and no certainty that the case would have a favourable conclusion. The plaintiff would have to be sure of his financial circumstances before he took up the challenge in a new court. On several occasions, searches to find the courts in which a prohibited case reappeared have proved fruitless - as in the Stowe example quoted above. The assumption must be that a writ of prohibition actually ended certain cases, rather than seeing them transferred to temporal jurisdiction.

On many occasions litigants negotiated terms agreeable to both sides on which a case could be amicably settled. Such informal

1. L.J.R.O.: B/C/5: 1807.

negotiations would often have their formal outworkings in a tender which was put into court and accepted. Occasionally a more formal procedure might be adopted. An interesting example survives from Worfield (Salop) in 1758. A case had been brought in the ecclesiastical court by the impropiator, Sherrington Davenport, who claimed tithe of wood, clover seed, agistment and turnips, against many of the inhabitants of the parish. The inhabitants claimed that clover seed was covered by a modus, which was in any case payable to the vicar and not the impropiator. They claimed also that their cattle were reared only for the plough or the pail, and not for meat, and thus by common law were not liable to tithe. Rather than let the case take its natural course, which could in any case involve a writ of prohibition because a modus was claimed, both sides agreed to submit to formal arbitration. Each side chose one arbitrator who would decide on the merits of the case and pronounce their verdict, which the protagonists contracted to accept. A memorandum of 24 April 1758 informing the proctors at Lichfield of the decision to accept the arbitrator's findings was sent to the court, and the case was formally dismissed⁽¹⁾.

It was also possible for a case to be dropped on a mere technicality. Such a proceeding was a salutary reminder to those who embarked on litigation, that even if their case was good in law it had to be properly presented. Such a fate awaited John Darwell, Vicar of Walsall, in his attempt to obtain tithe of a mill owned by James Gough⁽²⁾. In

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1. L.J.R.O. Miscellaneous unsorted cause papers.
 2. L.J.R.O.: B/C/5: 1785. (Add. Series).

his libel in 1786 he estimated that Gough's profit from his occupation must have been at least £100 per year, and that he was entitled to a clear tenth of it. . For three years before this, Darwall had been pressing his proctor at Lichfield to begin the case, but the proctor had always found some reason for delay. In November 1785 he complained of overwork which had caused him to delay serving the citation on Gough.

'Many journeys upon our Probate Courts in the month of October and three visitations in this month which I did not finish until Monday last prevented my causing Gough to be cited until yesterday.'

Darwall's letters to his proctor, Buckeridge - he wrote 19 in all between 1783 and the beginning of the case - clearly show his frustrations, not only with Gough but with other parishioners, and incidentally very well indicate the common pattern of non-payment of customary rights. He wrote in October 1785:

'If you'll engage to help me to my Dues, Sir, I'll engage to help you to Business enough and indeed it is high time for me to apply to you. I have had the living of Walsall these 16 years and am fully convinced I have never yet received one half of the Benefit. In many places of my Due Book there is only a single 8d. paid in a whole Page - the rest of the page consisting of non-payments of 6, 8, 10, 12, 14, and 16 years. Still from year to year I have been deceived by fair Promises and false Hopes and have been egregiously wrong'd in the Payment of my Rights. A person lately paid me for 3 acres of mowing; who, I

have incontestible proof had above 16 this year and the last; and most probably as many all the other years. He only accounted too for $\frac{1}{2}$ the Number of his Cows and Calves. This is an Honest Farmer (I had like to have said) - a very fair spoken man and a person of property. I have not seen him since his fraudulent payment and if we shou'd not agree when I do I shall leave the matter to Mr Buckeridge's Decision.'

Darwall had other similar prosecutions in mind, but his ardour for litigation had been completely dampened by his unfortunate experience in the matter of James Gough. The case which finally began in January 1786 came on when Gough was a sick man. He died before putting in his answer, and Buckeridge cited his son as executor to carry on the case. This was against the laws of the court. Buckeridge was non-suited and Darwall's case was lost. All the evidence provided and all the money expended on the case was lost. Darwall could not obtain payment of the many years' arrears. He could only cite Gough's son when he refused to pay, and would have to start again from the beginning and bear new costs.

There were, therefore, many reasons why tithe cases often did not reach a formal conclusion. Those which did usually took a long time to decide. At each stage there were possibilities for delay. There could be a delay even at the outset in getting matters ready to issue a citation. John Darwall had to wait well over two years in Walsall. If a citation was not obeyed in the ecclesiastical court, a writ 'Significavit' had to be sued out of the court of chancery to compel

a defendant to appear⁽¹⁾. This procedure alone could take up to a year, especially if it proved difficult to find someone who found it prudent to try to escape from the coming action. There was usually a long delay between the defendant's obeying the citation, and the issue of the libel. Answers and replications all had to be considered and legal opinion sought on the best means of reply. Witnesses then had to be marshalled and briefed before the depositions were taken. The evidence was published, and then passed to the judge for consideration. A date was then set for a hearing in open court, when the case was discussed by counsel. The judgment was then given, and costs apportioned at the discretion of the judge. In the equity court, of course, the whole process could be further complicated by the issuing of a cross bill to elicit further information from the plaintiff in the original suit; while in the ecclesiastical court, a writ of prohibition would end all proceedings. Proceedings generally went at a leisurely pace, and the records of the ecclesiastical court in Lichfield are full of postponements at each stage⁽²⁾. It was apparently easy for proctors to persuade the court that delays were necessary for justice to be done and although each record of the activities of a particular court day are prefaced by the heading "Acts Sped and Done", there is never any indication of the court actually taking steps to speed up the legal process. The following example from the dean's court at Lichfield between 1788 and 1790 may be taken as typical. Indeed in that the

1.P.P.s H.C. 1831-2. Vol. XXIV, pp. 5-660, contains a report on the jurisdiction of consistory courts.

2.L.J.R.O.: B/C/2.

citation was obeyed promptly business may have been despatched rather quicker than normal. On 6 October 1788, William Cooper, lessee of tithes in St Mary's, Lichfield, had a citation read against John Botham, a farmer in the parish⁽¹⁾. The defendant's proctor appeared for him on 3 November when the libel of Cooper was brought into court. The plaintiff's proctor prayed that the libel might be admitted. A decision on this matter, however, was deferred until the first session of the next law term, on 9 February 1789. Time was given, and postponements later granted, for Botham to put in his answer to the libel. The answer was finally entered into court in May 1789, and further delays occurred while the plaintiff's proctor examined the answer to see whether it could be attacked for failing to answer all the points made by the libel. He did not admit the sufficiency of the answer until October 1789, when the court authorised him to bring evidence to prove his case. Evidence, however, was never brought. Four postponements were granted before the court book noted in February 1790 that the case was under agreement. The parties had decided to settle the matter themselves. On 10 May 1790, the case was officially dismissed, "the parties having settled the business by arbitration". After eighteen months in the court the case had not progressed beyond the preliminaries.

Of course, certain cases were dealt with quickly. It was possible for a case to be heard and judged in less than a year. When the defendant replied promptly, and the evidence was clear, and perhaps when only a single point of fact was at stake, then with the concurrence of both parties, matters could be concluded speedily. When the Rector

1. L.J.R.O.: DC/1/4-6.

of Tatenhill, Robert Hardwick, cited Thomas Higgins to appear at Lichfield in September 1707, Higgins quickly filed his reply, and apparently no evidence was necessary. Judgment in favour of the plaintiff was delivered in January of the following year⁽¹⁾. Such despatch, however, was altogether exceptional. Far more frequent are references to cases lasting two, three and five years. The case of Pyper v. Mynion in Burton-on-Trent was begun in January 1736 and ended in March 1739⁽²⁾, while a Tamworth case Butters and Marshall v. Alport lasted from 1753 to 1759⁽³⁾. The overall tendency was for the length of cases to increase during the period, but there were sufficient exceptions to make averages misleading.

It is clear, however, that the longest cases at Lichfield were by no means as long as the longest heard in the exchequer. The famous Checkley tithe case, Roads v. Walker and Phillips was begun in the exchequer in 1712⁽⁴⁾. Phillips put in an answer but Walker answered with a cross bill⁽⁵⁾. The suit was delayed by the death of the plaintiff and the executors of the rector revived the suit in 1717, when depositions of evidence were taken at Uttoxeter⁽⁶⁾. As a result of this, the exchequer determined in 1719 that a trial at law should be held at the next Stafford Assizes⁽⁷⁾ to determine whether the modus of 3/4 claimed by the defendants was a valid one. Both sides appear

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1. L.J.R.O.: B/C/5: 1707.
 2. *ibid* B/C/5: 1736.
 3. *ibid* B/C/5: 1753-4.
 4. P.R.O.: E112/892 No. 97.
 5. *ibid* No. 98.
 6. P.R.O.: E134/4 Geo. I/M8.
 7. P.R.O.: E126/21 p. 313.

to have dragged their feet over bringing the matter before the assizes to such an extent that the trial was not held until July 1728. Two verdicts were given for the plaintiff. Doubtless in this long interval, attempts had been made to compose the differences of the two sides, but without success. When the case came back to the exchequer in 1729, the defendants were ordered to pay the tithes in kind, and the deputy was ordered to make an account of the sum due. This was not done until March 1733. Another year elapsed before the report was accepted by the court, and the defendants ordered to pay the tithes which had first been claimed twenty-two years previously⁽¹⁾. Such a delay was altogether exceptional but delays of five or even ten years before judgment was finally given and costs apportioned were relatively common. It should be remembered, however, that delays such as these were not always the fault of dilatory procedure in the courts. The complexities of the law and the numerous ways in which cases could be settled meant that there was always opportunity enough for those who believed it to be in their own interests to prolong the case by issuing a cross bill, by pleading more time to collect relevant evidence or accounts to make a satisfactory reply, or to produce vital witnesses. In the ecclesiastical courts, of course, a writ of prohibition entirely stopped the case which would then have to be heard again in a temporal court. Such activities had always to be related to the depth of a litigant's pocket.

The question of expense and costs in tithe cases is a crucial one.

1. For an account of the case and the evidence see Hutton Wood A Collection of Decrees by the Court of the Exchequer in Tithe Causes ... 4 Vols. (1798-9). Vol. II, p. 122. B.M. 512 b 19-22.

No recourse to law is cheap, but tithe cases could be an exceptionally severe drain on resources. In whichever court a case was heard, proctors and solicitors had to be hired and retained. Court fees had to be paid for every session in which the case remained to be heard. Citations, libels and replies all had to be paid for together with the appropriate stamps and seals. The longer the case dragged on, of course, the larger these formal expenses would be. In addition the prudent litigant, if he could afford it, would take the precaution of obtaining the opinion of learned counsel on the particular points of law raised by his case. Further expense to be considered was the cost of providing for material witnesses to be brought from their homes to the court to give evidence, which often rose to great heights when delays occurred and witnesses had to remain longer than anticipated, or had to be re-summoned. For such reasons, actual expenses would often exceed the formal bill of costs entered into the court by the winner of a case, so that the court might 'tax' the bill and throw the burden of payment of only such costs on the loser as the court considered absolutely essential to the prosecution of the case. The following example, from Cheadle in 1734, by Rupert Hurst, who had managed successfully to defend a tithe cause instituted by the rector, John Chilton, shows the range of formal expense incurred:

'A Bill of Expenses and Costs of Suit is a Cause of non-payment of tythes between the Reverend John Chilton, Rector of Cheadle and Mr. Rupert Hurst, made on the part of the said Rupert Hurst is as follows to wit:

	£	s.	d.
Proctors Retaining Fee	0	5.	6
For Informing against the Admission of the Libel on the part of Mr. Chilton	0.	3.	4
For a copy of the Libel sent to Mr. Hurst	0.	6.	8
For drawing the Personal answer of Mr. Hurst to the Libel	0.	6.	8
For Stamp and Repetition thereto	0.	1.	6
To Mr. Hand for his Consent and Extra Judicial Attendance at the Time of the Production of Mr. Hurst at Cheadle	0.	5.	0
To Mr. Hurst's Proctor - to the Registrar for Consent and Extra Judicial attendance at the same time	0.	6.	0
To Mr. Hurst's Proctor for attending at Cheadle two days to take the said Answer	2.	2.	0
For his Expenses at that time	0.	15.	0
For a Copy of Mr. Hurst's answers and for extracting the same	0.	3.	4
To Mr. Hand for his Information <u>Concerning the Sufficiency of Mr. Hurst's Answers</u>	0.	3.	4
To Mr. Hurst's Proctor for diverse times informing upon the same	0.	3.	4
Paid Mr Buckeridge for the <u>search of several Terriers of Cheadle being necessary to be looked into on the part of Hurst</u>	0.	6.	8
	£5.	8.	4

	£5. 8. 4
Proctors Fee for Searching the Same	0. 3. 4
For an Allegation on the Part of Mr. Hurst - Stamps	0. 8. 0
For informing upon the Admission of the Same	0. 3. 4
For a Copy of the said Allegation sent to Mr. Hurst at Cheadle	0. 3. 4
For a Decree against Mr. Chilton for answers English note Execution, Certificate Stamp	0. 6. 6
For the Production of the said Mr. Chilton upon the said Allegation	0. 0. 9
For a Copy of his Answers and for Extraction of the Same	0. 3. 4
For Positions Additional on the part of the said Hurst	0. 8. 0
For Information upon the Same	0. 3. 4
For drawing a Brief	0. 6. 8
Proctors Fee for informing on the day before and on the day assigned to hear Sentence	0. 6. 8
For drawing Sentence and Stamp	0. 5. 4
For the Fee for Sentence and so forth	0.13. 6
Proctors Fee for Exhibiting his Proxy after Sentence in Order to Put Sentence in Execution	0. 5. 6
For drawing this Bill and Taxation	0. 5.10
For Fees for Six Terms	1. 0. 0
For 30 Court Days	1.10. 0
For Acts of Court and Letter	- 4. 4
The Fee for Another Term	0. 3. 4
	<hr/>
	£12. 9. 5

£12. 9. 5

For Two more Court Days

0. 2. 0

£12.11. 5

(1)

The total bill, amounting to £12.11. 5, was taxed by the judge at £5 which was the amount of costs to be paid by the rector. Such a decision seems to have been quite harsh, as it is difficult to see how over half of the above expenses could have avoided. None the less, the defendant's agent was happy enough with the result to state in a letter in July 1734:

'We are come off with honour and triumph.'⁽²⁾

It was usual for the winner's costs to be met at least in part by the loser, but these would only be formal expenses, and a litigant could not expect to have all of his charges met. However, a litigant could not absolutely depend even on partial compensation. As the Diocesan Registrar told the Vicar of Ilam in November 1831:

'Even if proved, the Court has the discretionary power of either giving or withholding costs and this power is exercised when there is any appearance of litigious spirit in either of the parties.'⁽³⁾

Cases which were heard quickly and presented no legal complications would of course entail fewer costs on both sides. The declared expenses of the rector in the Tatenhill tithe case of 1707 cited above,⁽⁴⁾

1. L.J.R.O.: B/C/5: 1733-4.

2. B.M.: Add. Mss. 36663/147.

3. L.J.R.O.: B/A/19: Letter Book 'E' Mott to Port 4 November 1831.

4. See above, p.124.

totalled only £6.14. 5. Similarly, the Dyott and Holte families were successfully able to defend a modus of 11/2 in lieu of all tithes from three farms comprising 500 acres in the prebend of Freeford (Lichfield) when it was attacked in the court of the exchequer in 1777, for an outlay of only £41.12. 6⁽¹⁾. Definitive evidence of continuous payment and receipt of the modus was quickly produced and the case was dismissed without having to go through the expensive procedures of calling witnesses and establishing first a commission to examine them and then directing that the validity of the modus should be tried before a jury. The defendants estimated that the existence of the modus made a difference of £3000 in the value of the estate. At the other end of the scale, costs of law suits in the exchequer and in chancery could be ruinous. The expenses of nine defendants as charged on their solicitors, in the important tithe case of Cheadle⁽²⁾, which lasted from 1817 to 1836, amounted to £1507.14. 2⁽³⁾. The expenses of the 40 defendants of a suit instituted by the rector of Church Eaton in 1833⁽⁴⁾ totalled £109.17. 0 in the six months between December 1833 and June 1834⁽⁵⁾. The solicitors of William Oliver, the curate of Barlarton, drew up in 1844 a bill of costs in his attack on moduses in the parish which came to £1134.16. 9⁽⁶⁾, and these did not include certain other expenses incurred in a suit in 1838 which also formed

1. P.R.O.: E112/1971 No. 78. S.R.O.: D661/3 '3.

2. For which see below, Chapter V.

3. S.R.O.: D239/M4378. See below, Appendix III for an abstract.

4. P.R.O.: E112/2334 No. 8.

5. S.R.O.: D590/587.

6. S.R.O.: D593/T/1/24.

part of Oliver's campaign. On the other side, the Duke of Sutherland, who took a major part in the defence of the moduses, incurred a charge on his estate of £1211.13. 0⁽¹⁾.

With such possible expenses as these to consider, it is obvious that the theoretical rights of a tithe cause would often be of far less importance than the financial means at the disposal of litigants. When Joseph Delves, Vicar of Abbots Bromley, wrote to Lord Bagot in 1785, during a tithe suit which Delves hoped would discredit the moduses that Bagot claimed, he strongly hinted at the financial disincentives which had restrained earlier vicars from a course of action which was costing him dear:

'Your Lordship cannot but be aware that the foundation of my claims arises from the uncertainty and consequent illegality of the several Moduses set up to exempt your Lordship's estate from the small Endowment that I conceive belong to my Poor Vicarage, in so much that I knew not where to look either for Moduses, Compositions or Tithes. Why the Vicars of this Parish have so long submitted to forego their just Rights, I had rather leave to your Lordship's own candour than to give you any offence by suggesting the true reasons as conceived by me, which I think are too obvious to escape your Lordship's penetration.

The opposition I have met with and the expense I have been put to in endeavouring to obtain and establish the just lights of the Church (which I beg leave to assure your Lordship has been my chief motive) may in part, give your Lordship an idea why my

Predecessors have chosen to forego their rights and remain inactive rather than contend with Opulence and Power. And perhaps it might have been better for me to have followed their Example ...⁽¹⁾

The same points, not unnaturally, were to be made by the pro-Establishment journals of the 1820's and early 1830's. The 'Church of England Bulwark and Clergyman's Protector' whose avowed aim was 'to diffuse religious intelligence ... A share of the profits will be for the relief of reduced clergymen' printed in 1828 an anonymous article which advocated the establishment of a small fund to 'preserve small benefices from spoliation'. The article lamented that the 'inferior clergy' were unable to protect their own rights - i.e. their tithes - against adversaries 'numerous, wealthy and combined to ruin (them)'. The writer cited examples of lengthy cases with costs mounting, in which the tithe owner was unable to assert his rights, and concluded by telling the story of the vicar of Rainham (Essex), a 'Courageous champion of the Church (who) would not basely abandon her sacred rights, but resisted even unto death: just previous to which, wonderful to relate, he entirely defeated his adversaries; but alas, he died in the most deplorable circumstances in consequence of the enormous expenses he had to defray. Thousands of inferior clergy, appalled by such formidable obstacles, seek no redress whatever.'⁽²⁾

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1. S.R.O.: D(W) 1721/3/239. Delves to Bagot. 17 March 1785.
 2. Church of England Bulwark and Clergyman's Protector, Vol. I. (1828) pp. 16-18.

The Journal followed this contribution with a letter from a conveniently anonymous clergyman imprisoned in an unnamed gaol for 'Resisting the Plunder of the Temple'.⁽¹⁾

'You are aware that my attempt to assert my rights by the laws of my Country failed; subsequently to which, the victorious opponents determined to pursue their sacrilegious triumph by depriving me of liberty. Accordingly, whilst sitting at a friend's house not far from my own dwelling, a sheriff's officer entered and made me prisoner.'

The tale of woe continues by relating how, remaining in a debtor's prison, he had to spend his time in a sitting-room with thirty other people, while sleeping in a room with two others - a 'diminutive attic' containing 'bedsteads without curtain or posts'. How different was all of this he concluded, from the situation 'when we were undergraduates at Oxford'.

Of course, the Church of England Bulwark was concerned to squeeze dry the lemon of sentiment, and it is not suggested that numerous clergymen found themselves in debtor's prisons. None the less, the blatant emotionalism of this approach should not disguise the fact that the clergyman, or indeed lay-impropriator, with slender resources would find litigation a hazardous, and possibly ruinous, procedure, which it might be wiser not to attempt. The glebe terriers of Haughton (Staffs) from 1732 to 1773⁽²⁾ give clear evidence of the

1. *ibid.* pp. 19-20.

2. L.J.R.O.: B/1/6: Haughton.

problems which confronted a tithe owner with limited resources when he attempted to break old customs or moduses, and came into conflict with influential parishioners who defended these. The Rector of Haughton from 1726 to 1777 was Randall Darwall who tried to establish tithing in kind of various kinds of produce for which his predecessor William Royston had taken small payments, alleged by the parishioners to be customary. Darwall's first terrier, written in 1732, indicated the general nature of the problem:

'As to the small Tythes and Customary Dues of the Parish, there has been such confusion and irregularity for several years in the gathering of 'em that 'tis next to an Impossibility to ascertain the just right. Nor cou'd I obtain a Sight of my predecessor's Accounts, nor those of his Son. And the terriers likewise that have been formerly given up are vastly short & imperfect ... Most of the Old people are dead; and those that remain are either really or pretendedly ignorant of the Matter.'

Darwall also complained that what the parishioners claimed as a modus for tithe hay in part of St Giles' Meadow in the parish was in reality an 'Imposition : and a temporary agreement only of Old Mr Royston, the late Rector'. This was to be the 'pretended modus' about which Darwall complained in each successive terrier, but appears to have been unable to break. The expenses required to break it were apparently beyond the rector's means, and he wrote in 1773 that the occupier of the meadow had been promised just the support which he lacked:

'Mr Dale then pretended that his landlord, Mr Crewe, wou'd spend 2 or 3 Hundred Pounds in support of the said Modus.'

The modus in fact outlived Darwall, and it appears from the 1755 terrier that on one occasion at least the occupier was trying to extend it. Darwall complained that he was:

'Fraudulently contriving to hook in all the Meadow Land belonging to Mr. Crew into the same monstrous kind of a Modus; but such unfair purposes (I hope) will never be accomplished.'

Darwall's campaign to restore what he liked to call his just rights drew him into controversy with the Lord of the Manor, the notable lawyer and Master in Chancery, Francis Elde. The rector believed that he had a right to tithe fish from a pool called the Turn Pit, on land belonging to Elde. Elde's power over the parishioners appears to have been considerably stronger than the rector's. The terrier of 1751 states:

'Since Mr. Elde purchased the Woodhouse Estate and thereby (as it is asserted) became Lord of the Mannour the said Tithe (of fish) has been arbitrarily with-held, and the People effectually prevented from declaring what they know of the Matter under this politic but false and groundless suggestion (instill'd into 'em by the said equitable Master in Chancery!) vizt. that if Tithe Fish are due out of the Turn-Pit, they're equally out of all their Pits!'

The rector admitted that his attempt to increase his income by searching out his rightful tithes had made him unpopular with his parishioners - an ever present danger in such cases. He wrote in the terrier of 1766 that he had been 'expos'd to very unjust obloquy'. The dilemma created must have been a very real one. For the incumbent with a social

conscience but a poor income, the alternatives were either to be content with what the parishioners gave, and not to be too zealous in enquiring after arrears or non-payments of tithe: or to press every claim which, after all, were the claims of the Church, not of an individual, and would rebound on the successor, who might otherwise be similarly defrauded. In the case of Darwall, this latter course was attended with bitterness and acrimony throughout the parish, making the pastoral office of the incumbent virtually impossible. As Darwall had not the resources to fight long legal battles, he was doomed to disappointment. He wearily noted in 1755 that the wealthy, resourceful and influential Elde: 'is determined (it seems) that Might shall overcome Right.'

The final insult was reported in the terrier of 1773 over Darwall's claim for tithe honey:

'Tithe honey is indisputably due. And my predecessor's daughter in law gave me to understand that he had receiv'd every time any Bees were put down (though there were but few then in the Parish) a large Quantity of Honey in lieu of Tithe; and that her said Father in law oft purchased the Remainder being fond of Methegalis. But instead of paying me, some unconscionable Neighbours lately stole the only Hive I had left & pilfered the Honey. A strange Requittal for incommon forbearance.'

Against the small, isolated parishioner who made a stand against his demands, the tithe owner was strong. Against rich or influential parishioners, however, he was weak. Nor were parishioners slow to realize the value of combining together when new demands were made.

When John Edwards, Vicar of High Offley attempted to attack the numerous small moduses which were paid in his parish⁽¹⁾, a subscription list was opened to all freeholders and tenants of High Offley to pool their resources to provide greater means for their defence:

'Know all men by these presents that whereas John Edwards hath of late endeavour'd and still does threaten to break and destroy the Moduses payable in that parish in lieu for small Tyths and the ancient Customs and privileges of Tything always used within that parish. And therefore, for the defending, maintaining and supporting our sd. Moduses ... in relation to our Small Tythes we whose names are hereunto subscribed ... grant and agree to and with each other ... that if in case the sd. John Edwards doth ... prosecute ... against all and every or any of us whose names are hereunder written ... in any Court ... Spiritual or Temporal ... for the avoiding breaking thro' or destroying our said Moduses ... in such case all and every and each of us who shall be so prosecuted ... shall and will Defend such prosecution ... and also all such Costs charges troubles and expenses which from time to time we ... shall bear sustaine or be putt into ... for or by reason of commencing any suite or suites in law or equity.⁽²⁾

The list was quickly signed by 20 subscribers.

A similar subscription list was set up by tithe payers in Wolstanton in 1772 when Ambrose Smith and David Shubotham, lessees of the tithes,

1. See above, pp. 106-107.
2. W.S.L. M68.

were threatening legal proceedings against proprietors in the parish. 56 subscribers including the defendants signed a subscription which stated

'Whereas the farmers of the Parish of Woolstanton have heretofore thought themselves much imposed upon in paying and contributing Tithes Corn for the land they plough or occupy in this said Parish therefore we whose names are hereto subscribed Mutually bind ourselves our Heirs and Assigns in Vindication of the same and are Determin'd to Prosecute the order & see ourselves righted in paying and contributing the same and in case Any One shall hereafter Desist or Vary from these presents he or they then their Heirs or Assigns shall and will forfeit to any two of this society who they shall appoint to Collect the same the sum of five pounds.'⁽¹⁾

In 1773 actions were begun in chancery against 12 of the signatories to the subscription, and the subscribers authorised John Cole, who headed the list and was one of the defendants to pay all costs and charges of the defence, and

'hereby severally promise and agree to pay to the sd. John Cole their several respective shares of the sd. Costs & Charges proportionally to the yearly Value of the lands by them respectively held.'⁽²⁾

Obviously by such means, the range of defence and the expertise which

1. Sneyd Mss. University of Keele. S97. Uncatalogued.
2. *ibid.* S95. Uncatalogued.

could be sought to defend a claim would be very much wider than would be open to an individual. Often it would be in the interests of a large number of parishioners to help in the defence costs of one or two, especially if the case involved a parochial modus. A tithe owner would often institute a case against a small number of parishioners in the knowledge that, if he were successful, others who pleaded the same exemptions would make a satisfactory arrangement with him, rather than take a hopeless case to law. The usual course was for subscribers to help in the costs of the case according either to the amount of land held, or its rental value. Thus when St. George Bowles, Vicar of Caverswall, instituted suits against twelve defendants at Lichfield in 1799⁽¹⁾ twenty-three parishioners signed an agreement to share the costs, headed by two of the leading parishioners, Walter Hill Coyney and George Pigot Esq. Costs amounting to £18. 1. 0 were met by levying a charge on the subscribers of 1/6 for each acre of land held in the parish⁽²⁾.

Perhaps the most striking example to come from Staffordshire in illustration of the fact that tithe owners could fail to establish their claims against rich and powerful adversaries comes from Barlaston during the incumbency of William Oliver. Oliver was presented to the living by the Duke of Sutherland as patron, in 1834 on the death of the previous curate, Benjamin Adams. The Duke's choice was an unpopular one with certain influential parishioners who had been negotiating with

1. L.J.R.O.: B/C/5: 1799-1800-1.
 2. S.R.O.: D239/M2626.

another man. The new curate suggested in a letter to the Duke's Staffordshire agent, William Lewis, in May 1834, that one of them, a Mrs Adderley, had persuaded the other candidate, Mr Barton,

'to take the tithe in the same manner as Mr Adams did when he came into the living if they would procure him the place.'⁽¹⁾

Lewis himself was in no doubt that Adams had been under-paid. He estimated the value of the living in 1837, and stated that as at Adams' death it was worth about £167 a year, of which only £30 came from tithes⁽²⁾; and the only account of Adams' tithe revenue extract for 1826 totalled £26.14. 5½, largely from hay tithes and small compositions⁽³⁾.

The parishioners' fears about a new curate appeared amply justified when Oliver, immediately on his induction, engaged a land surveyor, Charles Heaton, to enquire into the true value of the tithes⁽⁴⁾. On the basis of this, Oliver began to demand tithe of hay in kind throughout the parish, which Adams had never done. Not surprisingly, he was refused and the curate wrote to the Duke of Sutherland about the problem. The Duke apparently replied in December 1834:

'I am sorry to hear of your meeting with difficulty in collecting Tithes at Barlaston for which I cannot conceive any good reason as the Proprietors are esteemed good friends of the Church Establishment and must be willing to perform their duty in providing their minister with his lawful rights, and I should

1. S.R.O.: D593/X/1/5/30. Oliver to Lewis 16 May 1834.
2. S.R.O.: D593/X/1/3/26. Lewis to Loch. 18 February 1837.
3. S.R.O.: D593/T/10/1.
4. S.R.O.: D593/X/1/5/30. Loch to Oliver. 22 May 1834.

consider you fully justified in enforcing your claims when what is due is refused, and I hope you will do so with effect.

I am sure the Bishop must wish you to receive the proper Tithes from Barlaston which should amount to at least two hundred pounds.⁽¹⁾

Presumably bolstered by this encouragement, Oliver in 1836 brought a suit in the exchequer against five defendants, Ralph Adderley, George Benson and Joseph Hand, together with Hand's tenants, John Aston and John Bailey⁽²⁾. Oliver claimed tithe of hay and all small tithes.

The defendants replied that tithe of hay was not payable from much of the parish because the curates of Barlaston had always held two small meadows, Priest's Meadow and Dusteloe Dole explicitly in lieu of tithe hay. Pressed by the plaintiff, the defendants stated that were full tithe payable, it would have amounted to £174.12. 0 for the two years. They alleged, however, that certainly from John Hargreave's incumbency which began in 1731 no such tithes had been demanded. It was easy to see, however, why Oliver was keen to recover the tithes. They would have made his living worth nearly £250 a year. It is interesting to notice that the defendant's solicitors, Messrs Brandon and Cattlow, approached Robert Fenton, the Duke of Sutherland's solicitor, with a view to persuading the Duke's agents to help to meet the mounting defence costs. Probably deliberately, Oliver had not included in his

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1. S.R.O.: D593/K/1/5/39 Oliver to the Duke of Sutherland, 14 December 1840. It should be noted that Oliver quotes the Duke's letter of December 1834 in this letter. The original letter cannot be traced.
 2. P.R.O.: E112/2334 No. 22.

bill of complaint any tenants of the Duke, and therefore Fenton replied in September 1837 that he could not give assistance, especially at the stage which the case had reached, when the mode of defence had already been decided without reference to the Duke. The clinching argument, however, was the following:

'We are much inclined to doubt whether his Grace's situation as Patron of the living would allow us to recommend his co-operation in the defence of a Tithe suit by the Incumbent where his Grace's own rights are not ostensibly at Issue.'⁽¹⁾

The Duke's legal resources were not, therefore, placed at the hands of the defendants, and this may have had a decisive bearing on the result. In 1839³ Baron Alderson pronounced in the exchequer that the defendants had not sufficiently proved their exemption from tithe, and were to account to the curate for tithe of hay, milk, calves, wool, lamb and geese⁽²⁾. None the less there was a feeling on both sides that Oliver had been fortunate. Lewis had written to James Loch, commissioner of the Sutherland estates, in February 1838:

'I think if the case was fairly gone into he (Oliver) should have but little chance of success.'⁽³⁾

Fenton could give Loch confirmation of this opinion. In 1841 he wrote that Oliver's own counsel had been surprised that the entire decision had gone in the curate's favour⁽⁴⁾.

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1. S.R.O.: D593/K/1/3/25. Fenton to Brandon & Catlow. 7 September 1837.
 2. S.R.O.: D593/E/7/16b.
 3. S.R.O.: D593/K/3/26. Lewis to Loch, 5 February 1838.
 4. S.R.O.: D593/K/1/3/30. Fenton to Loch, 10 January 1841.

Oliver was sufficiently encouraged by his success in the exchequer to try again. On 27 December 1839 he filed a new bill in the court of chancery against thirty-two defendants including, apparently by an oversight, a small tenant of the Duke of Sutherland, Mrs Ashcroft, in the bill⁽¹⁾. Oliver was soon to learn that this was a fatal mistake. In his letter to the Duke of Sutherland in December 1840 he stated that his solicitors

'had scrupulously avoided putting any of your Grace's Tenants in the Bill although they are all seven years in arrear.'⁽²⁾

As far as the Duke's advisers were concerned, the matter was plain. Whatever qualms they may have had in supporting the defence of the former suit in 1837 because the Duke was patron of the living were now dispersed. Tithe claims directly affected his rent rolls. Obviously land tithe-free or subject only to a small modus could be let at a higher rent. Fenton wrote to Loch on 10 January 1841:

'The questions which are at issue with Mr. Oliver are of some magnitude looking to his Grace's interests merely. The Duke has 380 Acres in Barlaston the whole of which will be subject to Tithes of Milk and Calves if Mr. Oliver succeeds, and about 229 Acres of that quantity would also be subject to hay tithe to him.'⁽³⁾

In the second suit, therefore, the full machinery of legal advice and expertise of the Duke of Sutherland was put at the disposal of

1. P.R.O.: C13/1579. Oliver & Latham.

2. S.R.O.: D593/K/1/5/39. Oliver to the Duke of Sutherland 14 December 1840.

3. S.R.O.: D593/K/1/3/30. Fenton to Loch 10 January 1841.

the defendants. Advice was given on the conduct of the defence, which was explicitly critical of the defence put up in the exchequer:

'It seems that the Deft. in that suit did not call in question the plaintiff's right to the hay and what are called the small or vicarial tithes of the Parish - but rested their defence on certain alleged Moduses ... which they failed in supporting.'

Now that the Duke's advisers had given the matter their consideration they

'are of opinion that the facts of the case were not fully before the Court on the hearing of the last cause or the Result would have been different.'⁽¹⁾

At a meeting of tithe payers in Barlaston on 15 November 1840, Fenton addressed the company, and Oliver sourly noted that he had urged them to put in their defence along the lines suggested by the Duke's advisers.

'With the encouraging assurance that he had little doubt but that if every occupier would put in an answer similar to the one he had prepared for Mrs. Ann Ashcroft with the assistance of the usual Modes which offered for legal procrastination they might be able to keep me out of my Tithes for some time to come.'⁽²⁾

When the case came to be heard before Vice-Chancellor Bruce on 29 January 1842, Oliver discovered the problems his mistake had caused.

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1. S.R.O.: D593/E/7/16 b.
 2. S.R.O.: D593/K/1/5/39. Oliver to the Duke of Sutherland 14 December 1840.

The Vice-Chancellor did not find for the plaintiff as Baron Alderson had done in 1839 but directed that the vital moduses should be tried before a special jury at a convenient assizes⁽¹⁾. Trying to avoid a confrontation where the scales would in all probability be weighed against him by a tithe-paying jury, Oliver tried one last desperate throw. In November 1842 he appealed to the Lord Chancellor that the Vice-Chancellor had directed wrongly on the evidence before him. The appeal was dismissed, however, and a special jury tried the case at Gloucester Assizes in July 1844. They upheld the validity of the defendants' moduses at all points. Oliver had to admit defeat by superior forces called down on him by the inclusion of the Duke of Sutherland's tenants as a target for attack. The solicitors of both sides tidied up the affair during 1845, and Oliver gained one useful concession to his pocket if not to his pride. Each party determined to pay their own costs. The Duke's solicitors wisely refrained from this imposition arguing that if they held out for costs it was by no means certain that Oliver could oblige. They could afford to be lenient with a man

'whose circumstances cannot be flourishing and who is likely to give preference to other creditors.'⁽²⁾

It is clear, therefore, that winning or losing a tithe cause was not entirely a matter of justice, but rather of depth of resource, or resources. Oliver talked in 1844 of quitting Barlaston for ever, and even of changing places with the schoolmaster at Dilhorne⁽³⁾. Certainly

1. S.R.O.: D593/E/7/16 b.

2. S.R.O.: *ibid.*

3. S.R.O.: D593/K/1/3/33. Fenton to Loch 24 February 1844.

his position in the parish was no longer tenable after such a humiliating reverse. The sense of grievance was not, of course, limited to tithe owners. Parishioners of slender resources with no influential friends could equally easily have valid moduses broken for want of proper evidence or the legal expertise to present it properly. If possible, it was usually safer to avoid recourse to law altogether. Once embarked upon, many litigants sought almost any way out of the toils and financial drain which it could impose. It is not surprising that so many cases were concluded out of court, and of course it is impossible to tell how many potential litigants were deterred by the prospect of seemingly endless expense with no guarantee of final reward. Randall Darwall observed of his situation in Haughton, that might overcame right⁽¹⁾. A study of tithe ^{litigation} ~~legislation~~ suggests that his outburst had a more general validity.

1. See above, pp. 136.

CHAPTER V: Case Study: Tithe Disputes in the Parish of Cheadle,
1817-1836

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Cheadle, in North Staffordshire, was, in the period immediately following the end of the Napoleonic Wars, the scene of an interesting tithe dispute, involving protracted litigation and enormous costs to the protagonists. It clearly indicates that the tithe law was in need of drastic and permanent revision. When opponents of the tithe system launched their attacks on it they usually made the evil of litigation, together with its attendant expense and ill will, one of the central planks in their argument. The Cheadle tithe case was not cited as a 'cause célèbre' in the national campaign against tithes, but the problems which it brought to light were mirrored in others which received greater attention. In all, the Cheadle case merits study as indicating in some detail how and why many tithe battles were waged and which weapons were used to fight them.

At the close of the Napoleonic Wars, Cheadle was a large parish of nearly seven thousand acres which was mainly agricultural but which contained a small market town. The population of the parish was of the order of three and a half thousand⁽¹⁾. The soil was not particularly rich, much of the parish being moorland on which only rough pasture was possible. A survey of the land use of the parish was made at the time of tithe commutation in 1842, and it was noted that only 750

1. V.C.H. Staffordshire, Vol. I, p. 328. For a general history of the parish see R Plant: A History of Cheadle (1881). The book contains some useful information although mainly of antiquarian interest.

acres of land were farmed for crops. Over a thousand acres were used as meadow ground, but 3350 acres were pasture⁽¹⁾. The parish was not, therefore, greatly productive of the most valuable tithes, but its large area made it a living of fair value⁽²⁾. Certainly previous rectors had thought it worth while to fight for the value of their living from tithes, and the parish had a long history of tithe disputes stretching back to the fifteenth century. In the eighteenth century three rectors had taken their grievances to law. Between 1703 and 1708 Richard Binns, a rector of Cheadle, had instituted suits against three parishioners for non-payment of tithe⁽³⁾. In 1723 and 1728 Michael Hutchinson brought two more defendants to the diocesan court at Lichfield⁽⁴⁾. When John Chilton attempted to impose payment of tithes for hay and colts in his parish between 1732 and 1734, however, he met with little success⁽⁵⁾. Defendants claimed moduses in lieu of hay from substantial estates and were able to prove them. Thomas Hewitt, for example, claimed a modus of 4d. in lieu of all hay tithes from the Thornbury Hall Farm, which comprised nearly 63 acres. He won his point and Chilton found that he could only legitimately claim the modus. In addition he suffered the indignity of having to pay costs. There were many moduses claimed in lieu of hay and agistment tithes in Cheadle, and all of them seem to have been jealously guarded. The preamble to the Cheadle tithe commutation award noted

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1. L.J.R.O.: B/A/15/61. See also P.R.O.: I.R. 29/32/61.
 2. See below, Appendix II.
 3. L.J.R.O.: B/C/5: 1703, 1707, 1707-8.
 4. L.J.R.O.: B/C/5: 1723-1728.
 5. L.J.R.O.: B/C/5: 1733-4 & B/C/2/98 p. 273.

that over 2450 acres of the parish were covered by twenty-four distinct moduses totalling only £0. 7. 1⁽¹⁾.

It seems that for almost a century after John Chilton's unsatisfactory attempts to collect more tithe, subsequent rectors were dissuaded from pressing tithe claims. When strife did begin again, it began for a combination of the two most common reasons for tithe battles: a new rector unaware of the tithe history of his parish, and a claim for tithes which had never previously been made. Rev Delabere Pritchett became rector of Cheadle of 1814, and began his incumbency as did many other clerics of the time, by seeing how his revenue could be improved. His eye soon lighted on two crops which were being grown fairly extensively in the parish and which were regarded by the inhabitants as being tithe free: potatoes and turnips. Potatoes were being grown in Cheadle in considerable quantities, a practice having grown up whereby several landowners gave over small portions of their land to their labourers - never more than a quarter of an acre to each man - for potato cultivation. The potatoes were the labourers' own responsibility, as they provided what manure or fertiliser was required and they also kept all the potatoes they were able to grow for their families' use⁽²⁾. If Pritchett were to claim potato tithe, therefore, he was immediately faced with a problem. If he were to demand tithe from the labourers themselves - all of whom individually were growing so few potatoes as to make tithing them

1. L.J.R.O.: B/A/15/61.

2. P.R.O.: E112/2242. No. 16. Reply of Thomas Wilson.

a project hardly worth while - he would incur the wrath of the poor of his parish, and make tithes a matter which directly concerned the poor, which was unusual by this time. On the other hand, if he demanded these from the owners of the land, or from substantial tenant farmers who sub-let small allotments for potato cultivation, he would expect them to disclaim all responsibility for produce which they had not themselves grown. Thomas Wilson farmed 650 acres in Cheadle but he saw no reason why he should be saddled with payment for potato tithes.

Pritchett's exploratory attempts to obtain tithes which had never before been paid soon led to trouble. An entry in his diary in October 1817 showed clearly that he had incurred the wrath of one labourer at least:

'Octr. 6th.: John Salt Jnr. came & begged my pardon, said he was only in joke when he pelted Kirkland⁽¹⁾; that if any Tithes were due, he was very willing to pay; but that he had only seven strikes; that James Moss was a blackguard for having told me as he knew that no one besides himself was going to dig up potatoes that day. I told him I was glad he had seen his error & that the present tithes (the quantity being so small) were of no consequence; but that he must remember in future, potatoes were tithable.'⁽²⁾

Matters, however, went deeper than one labourer's offence against a tithe collector. On 14 October a meeting was held in the Cheadle work-

1. Presumably one of Pritchett's tithe collectors.

2. W.S.L.: M.57.

house to discuss the rector's new claims, and it is clear that those present resolved to resist them. It is not stated who attended the meeting, but it is reasonable to assume that many of the leading landowners would have been there as any new claim would affect them. Pritchett's diary noted one consequence of the meeting which showed how unpopular he had become:

'Long afterwards Workmen & children cried out after the Rector as he passed along the streets: 'Tatoes, Potatoes, Turnips & Potatoes, Potatoe-Guts'. The same words were written on the walls & doors in chalk with caricatured figures of the Rector.⁽¹⁾

It was obvious that Pritchett could not expect to succeed by trying to convince his parishioners of the justice of his claims. From 1816, he was preparing to enforce his claims by recourse to law. It seems that although the rector's first concern had been with tithe of potatoes and turnips, his scope was soon widened by research into the tithe history of his parish. In particular it galled him that half of the meadow and pasture land in the parish was covered by small moduses. In 1818 he had notices printed and sent to leading inhabitants in which he stated baldly:

'I do determine and put an end to all Exemptions or pretended exemptions from Tythes, and all money and other payments which under Any Agreement Composition or otherwise are or have been claimed to be payable in lieu or in respect of the tithable matters and Things arising, growing, renewing and increasing

1. *ibid.*

2. S.R.O.: D239/M4458.

within the Parish ...⁽¹⁾

Tithes in kind were to be payable for each inhabitant for all crops grown. Clearly, Pritchett did not intend to make this his usual practice. A claim for tithes in kind served two interconnected purposes. Firstly, it implied that the rector would not accept modus payments as genuine; and secondly, once this had been accepted, new and more realistic money equivalents could be substituted.

The rector would not have expected his action to be placidly accepted by the inhabitants. As early as November 1817, certain inhabitants were making plans to deal with any trouble, by taking preliminary advice as to the justice of their position. They held meetings with an experienced firm of solicitors and awaited the rector's next move⁽²⁾. Pritchett determined to take advantage of the Act, passed in 1813, extending the value of tithes which could be claimed before two Justices of the Peace from £2 to £10⁽³⁾. In November 1820, he issued summonses against fifteen inhabitants of Cheadle for specified sums of money said to be the value of tithes neither paid nor compounded for. Simon Fowler, for example, a substantial farmer, was summoned to appear to answer charges of non-payment of potatoes, turnips, hay and clover, milk and calves, which were said to amount to £4.10. 6⁽⁴⁾. The defendants had carried their association to the point of a first defence which was conducted by Mr John Blagg. On 10 October 1820 seven leading inhabitants had met in Blagg's office

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1. S.R.O.: D239/M4458.
 2. S.R.O.: D239/M4378.
 3. See above, Chapter III, p. 78.
 4. S.R.O.: D239/M4433.

in Cheadle and had requested their solicitor to obtain the opinion of counsel:

'as to the Rector's power to maintain his claims before two magistrates and that they attend to oppose such claims on the Parties being summoned.'⁽¹⁾

When Pritchett's complaint was heard on 21 November 1820 at Uttoxeter before two magistrates, Lord Waterpark and George Whieldon, the defendants had already received expert opinion on the state of their case. They had satisfied themselves that the rector could not proceed by claiming only part of his demands, to keep his total demands below £10, and then make another claim when the previous one was settled in his favour⁽²⁾. They were further assured by the same source that if they claimed modus payments then the rector could not conclude his case in the ecclesiastical court, but would have to sue in the equity court, which would enable trial of the validity of the moduses to be heard before a jury of freeholders. Pritchett, interestingly, was represented at the hearing by John Tomlinson, a Stoke-on-Trent solicitor who had recently bought up the impropriation of the rectory of Stoke and was busy asserting his own claims to new or long forgotten tithe payments⁽³⁾.

Blagg stated to the magistrates that the legislation of 1696 and 1813 empowering summary jurisdiction was passed only to facilitate the process of law where tithes had been 'usually paid and ... unquestionably due'. It was never intended to aid tithe owners

1. S.R.O.: D239/M4405.

2. Opinion of A Hart 26 October 1820 S.R.O.: D239/M4263.

3. See above, Chapter II, p. 58-69.

'in enforcing new claims that were never before heard of in the Parish.'⁽¹⁾

Such claims, he asserted, were the proper province of the courts of equity.

Tomlinson opposed this view by stating that magistrates were competent to decide the validity of such claims. If the defendants wished to claim moduses they should give precise descriptions of them, and enter a bond with sufficient sureties to pay the costs of the suit they should bring to defend them. Blagg pointed out that such a process would be to the disadvantage of the poor litigant who would find it impossible 'to find two people willing to join him in a Bond for the Payment of Costs of a law Suit which may hang over his head for 10 or 12 years'.

The magistrates disagreed about their competence to try the suit, and adjourned the meeting for a fortnight in order to take further opinion. When they met again, they were joined by a third Justice, Dr Greaves. In the meantime, however, the defendants received further legal opinion, which caused them to change the basis of their defence. T Denman held that Justices were obliged to hear suits concerning small tithes under the value of £10, whether or not the claims were new. The defendants had, however, told Denman that the rector had only been able to keep below the £10 in many cases

'by setting down 3 acres only when a man has gotten 30 or 40 acres of Hay, or a less number of Cows than were actually kept.'⁽²⁾

1. S.R.O.: D239/M4296.
2. S.R.O.: D239/M4262.

Denman strongly implied that if this could be proved, then the magistrates could legitimately refuse to hear the case.

When the magistrates met again on 6 December 1820, Dr Greaves sided with Lord Waterpark in the conclusion that magistrates should not try the case, much to the annoyance of the plaintiff's solicitor who, according to his opposite number's report of the hearing:

'was very violent in his whole deportment during this meeting' and threatened the magistrates that he would apply to the court of king's bench for a 'writ mandamus' to compel them to hear the case. Blagg reported that Tomlinson did indeed try this means of obtaining a speedy and favourable decision, but was refused

'on the ground that the tithes claimed were in fact worth more than £10, tho' purposely valued at less to bring them within the Statutes.'⁽¹⁾

Pritchett had therefore met with a significant rebuff. He already knew that he was being opposed not by isolated individuals but by what his solicitor was later to call 'a Powerful Combination'⁽²⁾ who believed it to be in their own interests to resist the wide-ranging claims that the rector was making. His one hope of swift and relatively cheap success. was a favourable decision by local magistrates which the defendants would not attempt to overthrow by instituting an exchequer suit of their own. This avenue was now closed. Recourse to the ecclesiastical court would only waste time and money, as ecclesiastical courts could not try the validity of moduses once a writ of

1. S.R.O.: D239/M4296.

2. In a letter by Robert Lys published in the Staffordshire Advertiser 6 January 1827.

prohibition had been sought by those who wished to defend them.

Pritchett could now obtain legal redress only by instituting a suit in a court of equity - either exchequer or chancery - with all of the attendant hazards which that involved in time, mounting expenses and ultimate uncertainty. After December 1820, he began to prepare himself for an equity suit.

His opponents had meanwhile not been idle. A week after the second magistrates' meeting, their formerly loose organisation of common interest was greatly strengthened by the signature of formal articles of agreement by leading Cheadle landowners. The agreement was given teeth by the appointing of a committee which was to meet to superintend the administration of the case, and make financial provision to ensure that funds were readily available to meet all necessary expenses. Five of the largest landowners in Cheadle determined at a meeting on 12 December that an agreement should be signed by all interested parties to provide funds for the defence of their moduses against the rector. They further agreed that all expenses should be borne by the parishioners who signed the agreement:

'in such shares and proportions as their respective lands shall
be assessed in to the Poor Rates of the said Parish of Cheadle.'⁽¹⁾

All the sums of money so raised:

'shall be applied by the said Cttee. in the payment and discharge of all costs, charges and expenses which have already been incurred in taking legal advice, preparing agreements ... and

all costs charges and expenses to be incurred ... in defending any suits or actions which may be brought in the Ecclesiastical Court or in any Court of Law or Equity or any Informations or Complaints which may be laid before Magistrates by the present Rector ... against any of the said several persons who are Parties hereto ... or any of their late present or future Tenants for the purpose of enforcing the payment of tithes.'⁽¹⁾

It is interesting to note that these proposals were drawn up by the most wealthy and significant landowners in the parish. These five landowners, Thomas Honeybourne, Clement Sneyd, John Buller, John Leigh and Thomas Harvey seem also to have appointed the tithe committee of fifteen members, including each of them. All five were rated at more than £50 in the assessments to the poor rates, Honeybourne and Buller being the largest owners, both rated at more than £400⁽²⁾. The tithe committee, which was set up under the agreement of December 1820, was very much a body dominated by substantial landowners. It left the day-to-day administrative work to the two firms of solicitors which were engaged on the defence, Blagg & Sons and Messrs Brandon & Cattlow, but it provided overall supervision for the conduct of the case. Most importantly, the tithe committee was empowered to levy members whenever funds were required to carry on the case. Here lay the great strength of corporate action against the rector. In stating that he intended to query all moduses and customary payments in the parish, Pritchett

1. S.R.O.: D239/14451.

2. S.R.O.: D239/14453. With over 900 acres in the parish, Buller was the largest owner. L.J.R.O.: B/A/15/61.

was laying himself open to just this kind of riposte. Indeed it was only because he cast his net so wide that he encountered such united opposition. The tithe committee was specifically debarred from imposing a complete levy on parishioners if the rector instituted an individual suit which only attacked a modus on a particular estate. In such a situation:

'these persons only whose Estates are exempted or claimed to be exempted by Moduses similarly circumstanced shall contribute to the expenses of that suit.'⁽¹⁾

Although he might pick only on certain defendants, therefore, Pritchett was indirectly attacking all parishioners when he claimed, for example, tithe of cows and calves in kind. For if the rector was to be successful in an action against individuals, he would, with reasonable certainty of success, be able to extend his claims to the whole parish citing his successes as precedents. It was because of this danger that the tithe committee was formed. After December 1820, all interested parties were invited to sign the agreement, thus permitting themselves to be assessed towards the costs of the case. By 1825, seventy-eight owners and occupiers had signed the agreement, and very few inhabitants who had a direct interest in the result of Pritchett's endeavours had refused to sign⁽²⁾. The majority of subscribers, however, had little influence on the course of the action. This tithe dispute, like so many others, was basically a quarrel between substantial property owners and the tithe owner. The tithe

1. S.R.O.: D239/M4427.
2. S.R.O.: D239/M4468.

committee, nominally fifteen, was only once reasonably fully attended, and usually the business was conducted by a group of four or five substantial landowners. Much of the committee's work was purely formal, its most frequent task being to raise levies on those who had signed the agreement. Six levies in all were made between 1823 and 1836. Each of them was tied to the assessment of each contributor to the poor rate, which provided a useful, if not particularly accurate, differential. Levies were made to meet solicitors' charges as they arose. Three levies were made in 1823, 1824 and 1825 at 1/- in the pound, each of them intended to bring into the funds for the defence between £155 and £180. In 1826 to meet the exceptionally heavy legal costs incurred during that year⁽¹⁾, a levy at 2/- in the pound was made⁽²⁾. A further 2/- levy was made in 1833, and a final levy at 8d. was made in 1836 to clear up outstanding charges connected with the final agreement. In all, over £1500 was contributed towards the cost of the defence purely from these levies. Moreover, the levies themselves were agreed upon at meetings of the tithe committee which were extremely thinly attended. The large levy of 1833, for example, was agreed to by four of the most substantial landowners in the parish, with Sir John Buller in the chair⁽³⁾. Buller personally contributed more than anyone else in the parish towards defence costs⁽⁴⁾. But the value of the smaller owners' contribution to the tithe assessment

1. See below: Appendix III.

2. S.R.O.: D239/M4452-3, 4468, 4471, 4478.

3. S.R.O.: D239/M4405.

4. S.R.O.: D239/M4373, 4382, 4385. The six levies cost him £174.1.4, almost one-eighth of the total sum received. As Buller owned rather more than a seventh of the cultivated land in the parish, however, it may be argued that the poor rate assessment was rather kind to him.

was considerable. Between them they contributed £87.14. 0 of the £331.11. 6 to be raised to meet expenses⁽¹⁾. The labourers, whose growing of potatoes had first brought Pritchett's attention to his tithe rights, do not appear to have been invited to join the subscription. Pritchett was attacking not them, but the landowners and tenant farmers who had set small pieces of land aside as potato patches. Tithe disputes were predominantly property squabbles, as tithe was regarded in law as a piece of property enjoying equal rights with land. Those without land were not directly concerned in the issue. In this respect Cheadle was typical of most tithe disputes.

II

After Pritchett's rebuff at the hands of the local magistrates, both sides began to plan their campaigns more carefully and scientifically. The tithe committee realised that Pritchett would not meekly accept the situation. After all, the magistrates had not technically determined against the rector. They had said only that they were not competent to hear and determine the merits of the case. The committee therefore at the same meeting as they launched the subscription to defend themselves against the rector's claims, instructed their solicitors:

'that they do forthwith examine all the Terriers and other documents in the Bishop's Registry at Lichfield relating to the Rectory of Cheadle; and search elsewhere for such other

1. As against Buller's contribution of £42.16. 0, 49 of the 73 subscribers to the 1833 levy contributed less than £5, and 21 of them less than £1.

documents as they may think likely to throw light on the subject, and procure copies ... and lay a Case before Counsel if they find it advisable and take such other steps as may be expedient for putting them in possession of all circumstances affecting the matters in dispute.'⁽¹⁾

Accordingly, Henry Hewlett searched through all the possible sources of information about Cheadle and its tithing customs. He searched the Domesday Book, the records of Croxden Abbey, and the ecclesiastical records at Lambeth Palace, but was unable to find any ancient survey of the profits of the church which could have been vital in establishing moduses⁽²⁾. Nor were the terriers particularly helpful. As Mr Roussel pointed out in 1823 in his opinions on the moduses which parishioners claimed in lieu of tithes in kind, the Cheadle terriers were not always precise in their wording. No terrier after 1711, for example, stated that the 1½d. modus in lieu of tithe of cows and calves was payable in lieu of milk tithe⁽³⁾. The terriers also varied in describing the various farm moduses in lieu of hay tithes⁽⁴⁾. There can be no doubting the thoroughness of the search. The parishioners' solicitor noted:

'Mr Hewlett has been employed to search all the Depositories for ancient Documents for information respecting this Parish and he has made a voluminous Report ... but there does not appear to have been anything discovd. likely to be either useful

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1. S.R.O.: D239/M4405.
 2. S.R.O.: D239/M4269-4271.
 3. S.R.O.: D239/M4550.
 4. For the Cheadle terriers, see L.J.R.O.: B/V/6: Cheadle.

or injurious to the Defts.,⁽¹⁾

None the less, Hewlett was able to take advantage of the recent collections of tithe causes printed in the hope of elucidating conflicting points of tithe law and jurisdiction. When Pritchett moved to attack certain moduses in the exchequer, the defendants were able to quote from Gwillin's 'Collection of Acts and Records respecting Tithes' which had been published in 1801, in order to show that the moduses which they claimed had been upheld in previous actions:

'As to the 1d. for the agistment of barren cows. See Stuart v.

Greenall Gwill, 1789. As to the 4d. for Colts see Roscowen v.

Roberts Gwill, : Laying v. Yarborough Gwill, 1841.'⁽²⁾

All of this research was expensive. The cost to the defendants merely for search fees, copying terriers, ancient documents and precedents was over £50⁽³⁾ while learned counsel would charge 2 to 3 guineas for each written opinion which he gave on a matter of tithe law submitted to him⁽⁴⁾.

Pritchett was, of course, engaged in precisely the same case construction. He likewise addressed himself to the Diocesan Registrar, William Mott, who was kept in lucrative business by both sides in searching and copying out terriers. He charged between 18/- and 20/- for each copy, plus fees for stamps and authentication when required⁽⁵⁾.

1. S.R.O.: D239/M4180-4189.

2. *ibid.*

3. See below, Appendix III.

4. See for example S.R.O.: D239/M4268 when Mr Bell charged two guineas in 1827 for his opinion on the validity of small points in the Chief Baron's judgment in Pritchett v. Honeybourne. His opinion was equivocal.

5. S.R.O.: D239/M4207.

Pritchett also engaged the land surveyor Charles Heaton to make a thorough survey of his parish and his estimated increase in tithe revenue if he were able to establish his claims. Heaton reported encouragingly that an extra £212 a year could be expected if hay tithe could be imposed. Agistment tithe might be expected to bring in £50, while potatoes, turnips and cabbages could increase the value of the living by £100⁽¹⁾. The estimated yearly increase of £362 would have made the living between 60% and 70% more valuable. Heaton's estimate must have been a great encouragement to Pritchett's resolve to litigate. Although undoubtedly worried about the financial aspects of litigation⁽²⁾, if successful, he could expect to have much of his costs paid by the defendants.

With the advice of his new solicitor Robert Lys, Pritchett determined on an action for non-payment of tithes against nine carefully selected defendants in the court of the exchequer. All the defendants were substantial owners or occupiers of land in the parish, though Buller, who was both largest owner and lord of the manor, was, presumably deliberately, omitted. Pritchett filed his complaint in 1822 in which he put in a claim for all tithes in kind from the defendants without specifying which tithes had not not been paid⁽³⁾. The inhabitants were apparently fully prepared for this action, and their solicitor had seen to it that twenty parishioners had in 1821 made tenders to Pritchett of the tithes and moduses which they believed

1. S.R.O.: D239/M4485.

2. See below, p. 166.

3. P.R.O.: E112/2242 No. 16.

to be due⁽¹⁾. Thus Thomas Honeybourne stated that his tender of 3s.9½d. for tithes claimed by Pritchett for 1818 was made up of a farm modus of 6d., 5 milking cows and calves at 1½d. each, 24 barren cows at 1d. each and Easter offerings of 2d. for his house and garden produce, 2d. for himself and 1d. for each of his four servants. Such a tender would of course be entirely unacceptable to the rector who wished to have the value of tithe in kind for all of these items and all the tenders were rejected. However, the plaintiff was not able to say that he had been refused all payment.

The defendants' answers were framed in the usual way. They all claimed both farm and parochial moduses. Richard Goodwin, for example, replied that he held 224 acres in the parish, but that hay tithe from a substantial part of it - Hazlewill Farm totalling 175 acres - was not payable because of a modus of 3d. which had been immemorially paid. He claimed parochial moduses of 1½d. for milking cows, 1d. for a barren cow and 4d. for a colt⁽²⁾. Although he was willing to pay these moduses, the rector had refused them. Thomas Honeybourne made the same defence but added that the tithes could not be payable in kind because if the moduses were not valid then the length of time during which they had been made suggested that they were annual compositions, which were 'not determinable without legal notice'.

Both sides were, however, keen to seek an out-of-court settlement. As was common in most tithe suits, the formal proceedings moved slowly on while negotiations were carried on behind the scenes. Pritchett's solicitor made an offer to the defendants at the end of 1823 which unfortunately does not survive. It was considered by an unusually

1. S.R.O.: D239/M4493-4512.

2. P.R.O.: E112/2242 No. 16.

full meeting of the tithe committee - 13 strong - on 6 December 1823, and rejected. The committee, perhaps aware that defence costs had exceeded £200 the previous year, did, however, propose their own solution. The rector should drop his suits and in return he would be guaranteed a tithe income of £600 a year:

'to be paid by the Individuals at a certain Rate per acre and to be collected by the Rector himself, provided that the Parishioners at large will agree to that proposition, and that it will be recommended to them to do so.'⁽¹⁾

Each side would pay its own costs.

The proposition foundered on two points. Firstly, the rector required further compensation to the amount of the county and poor rates, which the parishioners were unwilling to give; and secondly, no decision had been made about the moduses. The parishioners would undoubtedly still pay them for their own lands, and pay a higher rate for tithes on lands which were not covered by moduses. Captain Sneyd, who seems to have acted as an intermediary between the two sides, urged Pritchett to accept the offer, arguing that the living might in the long run gain even more by it. He wrote to the rector:

'The several money payments insisted on as a Modus, will, of course, be included and absorbed in the £600 a year without distinction and at the end of a long incumbency all traces of the payments having been actually made, and for what, may be lost. In this view the Agreement may be highly advantageous to

the succeeding Rector and injurious to the Landholder.'⁽¹⁾

Pritchett was sorely tempted. He knew that his own means of financial support were more easily exhausted than those of his adversaries and he wrote on May 1824 to his solicitors:

'I feel no hesitation in acknowledging to you that I am disposed to adopt this method of conciliating matters if it can be made consistent with honour and honesty. For though I believe it would be more advantageous to the living in the long run to proceed with the suit; yet standing alone amidst a host of foes while the College⁽²⁾ will only look on and applaud, I do not think myself bound to make such serious sacrifices as seem likely to be required, provided I leave the living in no worse condition than I found it.'⁽³⁾

More sacrifices, however, were necessary. Pritchett found that he could not reconcile agreement on such terms with either his conscience or his hopes of success in the exchequer, and the case concluded. The next stage was the examination of witnesses, and in this too, the defence had been well prepared. The court directed that a commission should be established to examine witnesses in Cheadle, and the commission met in the summer of 1824. The onus was on the defendants to prove the exemptions which they were claiming, and their solicitors had seen to it that an impressive array of witnesses was called from all stations of life prepared to testify that the various moduses had

1. W.S.L.: M57.

2. Trinity College, Cambridge, which held the patronage of the living.

3. W.S.L.: M57. Pritchett to Lys, 20 May 1824.

been immemorially paid. 39 different witnesses were called on behalf of the defence, although several of them testified for more than one defendant⁽¹⁾. Many of the witnesses were called to supply what the documentary evidence on occasion lacked - proof that moduses had been paid and accepted over a long period of time and that tithes now being claimed had never previously been demanded. Thus many of them combined advanced years with a long-standing knowledge of the parish. Richard Godwin had nine defendants called on his behalf, including the 75 year old schoolmaster, two farmers in their sixties, and one farm labourer aged 63. All of them testified that tithe of milk and colts had never been demanded before Pritchett came to the parish.

Perhaps the most valuable defence evidence, however, came from William Fallows, listed as a 'gentleman' who had assisted in tithe collection when his father had rented the Cheadle tithes in 1794-5. He testified that milk and calves had never been taken in kind, and also produced his father's tithe account book:

'And it will be found to contain all the Parochial Moduses insisted on as received by the Parishioners indiscriminately except for the few whose farms are covered by a Modus in lieu of all tithes.'

In addition, John Blagg had seen to it that many receipts given by previous tithe owners for moduses paid were collected and produced as evidence before the commissioners, together with all the terriers since 1711. 1711 was apparently selected as the earliest date because

1. S.R.O.: D239/M4130-4189.

in earlier terriers there had been some ambiguity about the customary payments. Thereafter they were listed identically.

The evidence produced on behalf of the plaintiff was less impressive. Of course, Pritchett was not in the position of having to prove moduses, but the witnesses called by his solicitor only testified that notices to pay had been properly served and that a combination had been formed against him⁽¹⁾. It is probable that the commission found that the evidence weighed in the defendants' favour - but again at a price. The three commissioners decreed that the defendants should bear three-fifths of the cost of the commission⁽²⁾ and the final bill of costs revealed that this exceeded £240⁽³⁾.

The court decided not to send each individual modus to trial at the assizes before delivering a verdict. After considering the voluminous evidence, the Lord Chief Baron delivered his verdict in November 1826. Apart from the specific decisions, the judgment is valuable for two general points it made. Firstly, it clearly indicates that courts of equity were no longer requiring extensive documentary evidence stretching back over centuries in order to establish a modus. As the Chief Baron remarked:

'It cannot be expected that any testimony should be produced that the lands ... were cultivated at or before the year 1189⁽⁴⁾, nor that the payments insisted upon were then made. It would be nearly as reasonable to require the actual production of that

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1. S.R.O.: D239/M4250.
 2. S.R.O.: D239/M4302.
 3. See below, Appendix III.
 4. The limit of legal memory.

which every case supposes, the deed of composition executed between the landowner and the parson, patron and ordinary. From the nature of the fact, it can be established on presumptive evidence only ... that is, the usage, as far back as can be reasonably traced [underlining mine] of the payment being made on one side, and of tithes in kind not being demanded on the other.'⁽¹⁾

Obviously there was crucial room for manoeuvre here, although judges' interpretations of what could reasonably be traced would differ.

Secondly the Chief Baron was evidently perturbed at the way in which Pritchett had not attempted to discriminate amongst the tithes he was claiming to see which of his claims were well supported and which were not. This undoubtedly prejudiced the court against him, and the Chief Baron described Pritchett's actions as:

'Firing a shot among the covey without much examination of what case was against them in order to see how they might fall and take his chance.' -

an assessment which was to hurt Pritchett and delight his opponents in deprecatory references in succeeding years. .

On the individual points at issue, the Chief Baron was more favourable to the defence than to Pritchett. Pritchett had demanded tithe of corn which had been continuously paid for many years without trouble. He was therefore criticised for having demanded the tithe in a court of law, and subjected to paying costs of this part of the suit and any

1. S.R.O.: D239/M4624. For a full report of the judgment see E Younge & J Jervis Reports of Cases argued and determined in the Court of the Exchequer (3 vols. 1823-30). Vol. 1, pp. 135-154.

other where it was shown that tithes had in fact been paid. Pritchett was, however, awarded the tithe of potatoes and turnips, to which the defendants had offered no other defence than that they had never been paid or demanded. Many of the small parochial moduses were overruled because the custom had not allowed any payments to be made under seven. The defendants were, therefore, to account for tithe of lambs, pigs, wool and geese. As the Chief Baron remarked, it was definitely stated in the custom that

'nothing is reduced under seven ... where tithe in kind alone is payable it must have been obvious ... that receiving something more from seven to ten could be no adequate compensation for receiving nothing under seven and from thence up to sixteen.'

The modus for milk cows and calves, however, was allowed because 'the weight of authority is in its favour'.

In terms of value, however, these tithes were of very minor importance compared with the farm moduses in lieu of hay. Only three of these was Pritchett able to break. He was now able to claim tithe of hay in kind from 220 acres. Against this seven farm moduses, totalling 809 acres, were upheld. Certainly the defendants' solicitor regarded the result as a triumph. As he rather smugly noted:

'Upon the whole we consider the result as exceedingly favourable to the Inhabitants - only 3 Moduses are upset and those we knew to be very doubtful and the other matters (except the wool) we were ready to have paid for without Suit if the Rector wd. have admitted the Moduses were good.'⁽¹⁾

The rector's deliberate extension of the cause of his grievance - potatoes and turnips - therefore had been of little service to him. He had also come off the worse by antagonising the Chief Baron in claiming virtually every tithe that he could think of. The court bore this very much in mind in determining that Pritchett should have to bear his full share of the costs of the suits concerning farm moduses⁽¹⁾.

None the less, the tithe committee was not entirely satisfied. At its meeting on 23 December 1826 it was resolved:

'That an Opinion to be taken whether the Inhabitants cannot reverse the Lord Chief Baron's Decision as to the custom of tithing Lambs, Pigs, Wool and Geese, and Eggs and Poultry, either by a rehearing or praying an issue upon these points.'⁽²⁾

It was, of course, also open to the rector to bring the moduses on which the Lord Chief Baron had determined to a trial by jury at the assize court. This he seemed unwilling to do. His main concern seems to have been to keep down the costs and to prevent the adverse comments of the court reaching an uncritical audience. The Staffordshire Advertiser had, on 23 December 1826, printed a report of the case, and Robert Lys was instructed to write a refutation of the implications made by the Chief Baron on the rector's motives in instituting the suit. This, however, only brought a further rebuttal from the defendants' solicitor, the net result of which was probably to bring Pritchett rather more publicity than was expedient.⁽³⁾

1. S.R.O.: D554/44.

2. S.R.O.: D239/M4405.

3. Staffordshire Advertiser 23 December 1826. 6&13 January 1827.

The question of costs, however, was even more pressing. Pritchett showed the urgency of the matter by taking time out from his Christmas festivities and duties to write to Lys on Christmas Day 1826:

'We must, my dear Sir, do all we can to prevent the Costs becoming too ruinous for me by diminishing theirs as much as may be and by making them account for as much as possible. Honeybourne laid down his lands and turned them into Pasture, by which he deprived ~~me~~ of Corn and paid nothing for Agistment. Now it can hardly fail but that he bought Cows, either with or without Calves, from other Parishes. Which according to the C(hief) B(aron)'s decision are liable to payment of milk agistment. This should be inquired into in his Case, as well as Higgs and Goodwin's.'⁽¹⁾

Enquiries, however, cost money and Pritchett's resources were now slender. He wrote to the Master of Trinity but received no great encouragement. As he wrote again to Lys:

'I wrote to Dr. Wordsworth, the Master of Trinity College and received an answer by this day's post. It is very friendly but gives me no cause to suppose that the College will help me in trying anything. I think it too probable likewise that I shall be under the necessity of enforcing some of my newly acquired rights unless I choose to sit down contented under their loss. I ... wish to conclude the business as soon as I can with safety to myself.'⁽²⁾

1. W.S.L.: M57. Pritchett to Lys 25 December 1826.
2. *ibid.* Pritchett to Lys 17 January 1827.

The conclusion, however, was not near at hand. Despite very disappointing opinion as to the possibilities of getting further successes at the expense of Pritchett⁽¹⁾, the tithe committee were by no means rushing to settle the case. Pritchett had extreme difficulty in collecting any tithe of hay, despite the partial success he had scored. Eventually early in 1830 he made his last attempt to obtain payment by recourse to law. On this occasion he chose not substantial proprietors but small owners and occupiers. Pritchett brought William Alcock, described as a 'Labourer' and five other small men, before two clerical magistrates, Rev John Sneyd and Henry Heathcote, for non-payment of tithe hay. Alcock was charged with non-payment of hay to the value of £1. The defendants, however, had the tithe committee behind them. The committee drew up a list of 52 persons 'supposed now interested in the tithe hay question'⁽²⁾. When on 17 February the clerical magistrates, not surprisingly, ordered the defendants to account for their tithes, the committee prepared for appeals⁽³⁾, and Alcock had provided for him the excuse at quarter sessions that his land was exempt from hay tithe by an award of 1552:

'whereby all the lands in the said Parish of Cheadle not then exempted by Modus were discharged or exempted from the payment of tithe hay for certain considerations in such Award expressed same and except for seven ancient meadows enumerated in such Award and in all the subsequent terriers as being subject to the

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1. S.R.O.: D239/M4268. Opinion of Mr Bell 29 June 1827.
 2. S.R.O.: D239/M4339.
 3. S.R.O.: D239/M4405. Meeting of 24 February 1830.

payment of tithe hay.⁽¹⁾

The quarter sessions quashed the magistrates' verdict, and when Pritchett brought the case to Leek petty sessions, Alcock convinced the court that the land for which tithe was claimed was an ancient meadow and that no tithe had ever been claimed or paid before Pritchett came to the parish. The secondary argument used in the former magistrates' proceedings in 1820 that summary jurisdiction ought only to be available when there was no dispute as to the tithe also apparently found favour with the court, and the quarter sessions decision was upheld⁽²⁾. Pritchett had again come off second best in a contest with the tithe committee. This was to be the final trial of strength. After 1831 both solicitors began searching for a final settlement. Since the judicial decision of 1826 no decision had been reached on the apportionment of costs which was a necessary pre-requisite to the settlement of the case.

Various discussions had been held between the solicitors, but no firm agreement could be reached, especially while both sides were still considering further litigation. After 1831, however, when discussions began in earnest, it was again seen that the defendants held the whip hand. Each side put in bills of costs which amounted in the case of the defendants to £1237. 2. 2, and in the case of Pritchett to £869.9.10⁽³⁾. For the defendants, John Blagg then began a breakdown of each defendant's liability to pay, based on the points won and lost in the

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1. S.R.O.: D239/M4462-4. Deposition of William Alcock.
 2. S.R.O.: D239/M4340.
 3. S.R.O.: D239/M4596-7.

exchequer cause. On this basis, Thomas Honeybourne, whose charges totalled £183.14. 6, should receive three-quarters of his own costs, totalling £137.15. 6, and pay to Pritchett a quarter of the rector's charges in the suit against him. As this was £27. 7. 6, Honeybourne was owed £110. 8. 0 by the rector⁽¹⁾. When these calculations were made for each defendant, it was estimated that Pritchett owed the defendants £750. There was further complication. After the Chief Baron's report, Pritchett had engaged Charles Heaton to make an account of the tithes then stated to be due from each defendant. These totalled £225.15. 5. This sum had never been paid; but Blagg, on behalf of the defendants, was now prepared to take it into consideration. He explained the defendants' strong position in a letter to Thomas Barbor, Pritchett's new solicitor, in February 1832

'When you consider that our total Bill amounts to £1287. 2. 2. besides nearly $\frac{1}{2}$ as much again for charges which it was useless to put into a Bill to be submitted for taxation or discussion with our opposite party - and that the Lord Chief Baron decided to give the Defendants Costs for the several matters decided in their favour and altogether reserved the consideration of the Rec.'s Costs ... I am sure you will agree with me in thinking the sum I look for is not out of the way.'⁽²⁾

Furthermore the £225.15. 5 would be considered in the agreement if Pritchett agreed to Blagg's analysis of the situation. If, however, he preferred to work out his own arrangement

1. S.R.O.: D239/M4592a.

2. S.R.O.: D239/M4593. Blagg to Barbor. 18 February 1832.

'We shall leave him to get his Tithe as he can, many of the Defts. being now dead.'

Haggling went on between Mander and Blagg for nearly three years⁽¹⁾, Blagg wishing to obtain a final settlement of £250 from Pritchett, and Mander being unwilling to go above £100. Finally, in August 1835, both sides agreed on a final settlement of £150. A draft agreement was drawn up finally ending the suit and all claims arising from it. It was finally signed in January 1836, and the following month Pritchett forwarded the £150 to Blagg's office. A dispute which had begun almost nineteen years previously was resolved.

There can be no doubt that the final outcome was deeply unsatisfactory to Pritchett. True, he had obtained tithe of potatoes and turnips, but most of the other claims which he developed later had been denied him. He had dug deep into his private resources, for the case must have cost him £1500 at least. His declared bill of expenses for 1822-6 alone came to over £850⁽²⁾. In return for this mighty outlay he was granted the right to collect two tithes which were grown in very small quantities and thus extremely difficult to collect. Pritchett was not in fact able significantly to raise the revenue of the living. In 1842 the tithe commissioners assessed the tithes at only £400⁽³⁾, whereas as late as 1832 Pritchett was making grandiose statements about the living being made worth nearly £1000 if all of the rights could be restored⁽⁴⁾. As the value of his glebe and other benefits did not

1. See the interchange of letters in S.R.O.: D239/M4379-4427.

2. S.R.O.: D239/M4596.

3. L.J.R.O.: B/A/15/61.

4. C.C.F. NB20/73.

exceed £150, it is clear that his hopes had been sorely disappointed. From the defendants' point of view, the value of combination had been clearly shown - especially if that combination included the lord of the manor and largest landowner. It was perfectly true that financial resources opened the way to much more sophisticated and better documented defences, and also in Cheadle, at least the clear ability to outspend the plaintiff so that time-wasting tactics were all to their advantage. It is a salutary thought that, had the defendants been acting alone, they would probably not have been able to muster sufficient evidence and legal expertise to stop the magistrates from deciding the whole case in 1820. Tithe suits clearly often depended less on right than on the power of the purse, and Cheadle provides an excellent example of this. Certainly, Pritchett made tactical blunders but they were comparatively trivial compared with the strength arrayed against him. Moduses were most jealously defended pieces of property and the Cheadle tithe committee perfectly demonstrates how expertly substantial landowners could defend them. When faced with such combinations, it is perhaps not sufficiently realized that the tithe-grasping parson of the cartoons and broadsheets frequently met his match.

CHAPTER VI: The Society of Friends and Tithe Payments

I

The Society of Friends was the largest and most influential sect which consistently expressed a philosophical objection to the payment of any kind of tithes. Many dissenters could, and did, argue the injustice of a legal obligation to support by tithes the local representative of the Anglican communion while they had at least a moral obligation to make a contribution to the ministers of their own sect. Two payments for one service performed was, after all, notoriously bad value for money. The Quaker's objection, however, went deeper than this. It involved a rigid adherence to Christ's command to His disciples:

'Freely ye have received; freely give.'⁽¹⁾

and a conscious rejection of the Jewish obligation to compulsory support of priests, as listed in Genesis and Leviticus⁽²⁾. When the Yearly Meeting of 1832 felt it necessary to recapitulate its reasons for urging on all Friends a consistent refusal to pay tithe, it was only restating what had been periodically mentioned in Epistles from the Yearly Meeting since the middle of the seventeenth century. The 'Brief Statement why the Religious Society of Friends Object to the Payment of Tithes' emphasized Christ's teaching

'that the ministry of the Gospel is to be without pecuniary remuneration. As the gift is free, the exercise of it is to

1. Matthew X v.8

2. See above Chapter I p. 1-2.

be free also ... The forced maintenance of the ministers is in our view a violation of the great privileges which God, in his wisdom and goodness, bestowed on the human race.'⁽¹⁾

The Statement went on from this point to argue that Tithes must have been introduced by the Roman Catholic Church and perpetuated by their Priests, and those of kindred religions. Tithe was foisted on the population:

'as superstition and apostacy, spread over professing Christendom, and was subsequently enforced by legal authority.'

In 1690, the Yearly Meeting had given the same explanation. Christ had ended the Jewish obligation to pay tithes, and:

'since they were ended by Christ, they were imposed and originally sprang from that anti-Christian root, papish usurpation in Church and State.'⁽²⁾

No other sect went to such trouble to ensure that its members paid no tithe to the Church of England. Furthermore, a recalcitrant Friend who insisted on paying tithe could in theory be expelled from the Society. Although it has not been possible to find any record of Quakers being expelled for this reason, and it is unlikely that any were, the very rubric does at least indicate the seriousness with which the elders of the Society viewed the crime of tithe payment. Between 1690, and the passing of the Tithe Commutation Act in 1836, the Epistle of the Yearly Meeting found it necessary to mention tithes, generally with further exhortations to refrain from payment

1. Minutes of the Friends Yearly Meetings (MYM) 1832. Vol. XXIV pp. 136-152. Friends House, Euston Road, London NW1
2. Epistles of the Yearly Meeting of Friends. Vol. I, 1690.

on 47 occasions.

It is significant also that the defenders of the tithe system in pamphlet literature singled out Quakers for special attack, mounting on occasion to execration. In an Essay published in 1700, C Leslie argued that tithes were of divine origin and that:

'The subject of Tythes is the Great Diana of the Quakers.

They have bent their whole Force against Tythe as the likeliest Means to overthrow the Church.'⁽¹⁾

Their 'blind enthusiasm' had also led to 'an excess of fury and Madness against all the Institutions of God'. Robert Wake, the Vicar of Fritwell (Oxon.) in 1703, was similarly thinking primarily of the Quakers when he condemned those:

'Self-conceited, ignorant enthusiastical people who do wholly deny the Payment of Tithes etc. as being allowed only (as they say) under the Jewish Oeconomy.'⁽²⁾

II

Refusal to pay tithes obviously brought Quakers into direct conflict with the law. Indeed, before 1696, if the Laws concerning the requirement to pay tithe were rigidly enforced, the Quaker found himself with no room for manoeuvre if he were to obey the faith to which he owed allegiance. He must follow a downward spiral leading to imprisonment and financial ruin. Mr Braithwaite has listed the

1. C Leslie: Essay Concerning the Divine Right of Tythes. 1700
B.R.L. 335442

2. R Wake: The Priest's Complaint: A Discourse on the Heinous Crime of Tithe Stealing. London. 1703. p.27

various means by which a tithe owner might expect to recover his dues from a Quaker⁽¹⁾. Of the various methods listed by him, tithe owners generally confined themselves to two. Quakers would be summoned to answer charges of non-payment of tithe either in the Ecclesiastical Court held in the cathedral city of the diocese or in the great civil courts of Chancery or, more often in the eighteenth century, Exchequer. In the Ecclesiastical Court, a Quaker would generally be required to answer on oath the Libel entered by the Plaintiff's proctor against him. If he refused to answer, he would be declared in contempt of Court, and the Court could apply to the Sheriff of the county after declaring the Friend excommunicate. The Friend would then be committed to prison either according to the provisions of the ancient writ "De Excommunicato Capiendo", or more frequently, by application to the local Justices of the Peace after the issuing of the writ "Significavit". If, as often happened, the Friend chose not to appear before the Ecclesiastical Court, and thus avoid the expence of hiring a proctor to speak for him, and the embarrassment of refusing to answer on oath, the end result was the same. The Court would declare him excommunicate and the secular arm would convey him to prison until he had purged his contempt by answering the charge, or paying the tithe together with the costs of the case. As his conscience would not permit either course, theoretically he would remain in prison until his death. In the Exchequer Court, also, the Quaker would be charged with contempt if he did not answer

1. A Braithwaite: Early Quaker Tithe Prosecutions in Journal of the Friends Historical Society. 1960. pp. 148-156

the case brought against him; and the equity court would issue an attachment to the Sheriff to apprehend and imprison him. The equity courts could also issue writs of sequestration whereby the tithe owner could recover the full amount allowed by law by direct distraint of the Friends' goods and property. The Quaker could, therefore, find himself still in prison for contempt even though the tithe, together with the appropriate penalty for non-payment, had been collected.

As has already been noted, the progress of a case in Ecclesiastical as well as Exchequer court could be extremely slow, cumbersome and expensive⁽¹⁾ and the Society of Friends were not the only people concerned to amend the law to provide a more summary jurisdiction in tithe cases, especially when the sums required to be paid did not exceed a few pence or shillings. The Meeting for Sufferings, which always supervised matters of this nature as the Friends' chief executive body, campaigned vigorously against a Bill presented to Parliament by the Bishop of London in 1695 which would have regulated procedure for recovering church rates and small tithes, but would have permitted no appeal from the Ecclesiastical Court's ruling and no trials by jury in doubtful cases⁽²⁾. A petition against the Bill was presented to the Commons⁽³⁾. The Bill was subsequently dropped,

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1. ut supra. Chapters III and IV especially pp. 83-85 and 124-131.
 2. Minutes of the Meeting for Sufferings (MMS) Vol. IX 1.12 month 1694/5 p.295 and Vol. X 19.2 month 1695 p.29. See also N C Hunt, Two Early Political Associations (1961) pp.32-42
 3. For which see J Gough: A History of the People called Quakers 4 vols. 1789-90. Vol. III pp.412-414

but it is not clear how decisive the Meeting's intervention had been. An equally serious factor appears to have been the common one of lack of Parliamentary time before the end of the session. At all events, the measure was not pressed with any great vigour.

Two Acts passed in 1696 which were much more to the Quakers' liking, and which embodied a radical departure from the procedures of recovering tithe of small amounts. A new principle was admitted by the Act which permitted Justices of the Peace to issue warrants of distraint for summary recovery of tithes not exceeding 40/-.⁽¹⁾ Even more palatable to Friends was an Act which singled out the Quakers for special treatment in tithe cases. Behind a momentous provision which permitted Friends to make a solemn affirmation instead of an oath, were clauses which permitted Justices of the Peace to act in summary fashion in the case of Quakers proceeded against for tithes not exceeding £10⁽²⁾. With such protection, it is hardly surprising that defenders of the Church establishment should subject the 'privileged' Quakers to special attack. The passing of this second Act, which remained in force until revised in 1813, was undoubtedly helped by an audience granted to five leading Friends by William III on 2 April 1695. These five, George Whitbread, Gilbert Latey, Thomas Lowe, John Taylor and Daniel Quare, presented to King William information about Friends presently imprisoned by Ecclesiastical and Civil Courts. As a direct result, 40 Friends were immediately set at liberty⁽³⁾, the King indicating:

1. 7 and 8 William III cap. 6. ut supra Chapter III p. 76.

2. 7 and 8 William III Cap. 34.

3. Gough op. cit. Vol. III, chapter IX.

'yt he would speak and advise with the Lord Keeper abot it
and that friends might also apply themselves to him.'⁽¹⁾

Despite these favours, Quakers were still liable to be cited into the same courts as before, the invocation of the new Acts being at the discretion of the tithe owner. Before 1696, Friends were wide open to constant imprisonment and heavy sequestrations on account of their 'faithful testomony' against tithe payment. Even after 1696 their protection was only partial and to a very large extent dependent on the willingness of tithe owners to use the new Acts. In such a situation the question must be posed: "Were the sufferings undergone by Friends in proportion to their numbers?" Before 1696 one might expect to find every Quaker who farmed land to be making regular excursions to prison, and some to remain there perpetually. After 1696 the Quaker might at the very least expect to be the victim of yearly distraint to cover not only the tithe, but the expenses incurred in obtaining the warrants. In fact, Quaker sufferings, though at first sight heavy, were confined even at their height in the late seventeenth century to a minority of Friends. For the rest, it must be asked how many religiously observed their faithful testimony, how many bent the rules in order to comply, and in how many cases were the worst excesses of the law mitigated by the refusal of tithe owners to press their claims too harshly. A study of the sources suggests that all three factors were at work.

1. M.M.S. Vol. X 5.2 month. 1695 p.23

III

Until fairly recently, it was generally believed that at the end of the seventeenth and the beginning of the eighteenth centuries especially, a large majority of Quakers were undergoing severe persecution for their religious beliefs. Gough was believed when he stated:

'The distresses and prosecutions for ecclesiastical demands were numerous and many of them exorbitant ... the rigorous enforcing of the ecclesiastical laws was rarely or never suppressed ... The number of those who laid down their lives in prison in consequence of these prosecutions is too large to recite particularly.'⁽¹⁾

Norman Hunt's researches into the agitation for the Quaker Tithe Bill of 1736 have provided a much-needed corrective to the one-sidedness of this view. He argued, rightly, that the number of prosecutions was declining steadily by the middle 1730's, and that the evidence of certain prosecutions had been misleadingly presented in order to argue the strongest possible case for a change in the law.⁽²⁾ Dr Hunt, however, did not permit himself a micro-study of the persecutions and prosecutions in order to ascertain the extent of their distress, and the amount of compliance with the law which they manifested.

From an analysis of the Books of Sufferings in Friends House, and

1. J Gough. op. cit. Vol. II pp.414-5

2. N C Hunt: op. cit. pp.64-72

a comparison with membership figures, it is clear that there must have been a large number of Quakers who regularly and continuously paid tithes. The Minutes of the Yearly Meetings and the Epistles sent out from those Meetings indicate clearly enough the constant problem. A resolution was passed in 1691 urging that:

'The Truth's Testimony agst. Tithes be duly kept up and the unfaithful therein exhorted and yt Enquiry be made of such Counties that have given no Accot. of their Sufferings.'⁽¹⁾

The actual spadework of converting these pious exhortations into a solid refusal at the local level to pay tithe was a task for the Quarterly and Monthly Meetings which served a particular area, Quarterly Meetings representing the Friends generally of a particular County, and Monthly Meetings of a particular locality, a town or group of villages. The Yearly Meeting noted in 1696:

'It's left to the severall monthly and Quarterly meetings to advise friends to be carefull ... yt nothing be done yt tends to weaken our Testimony agst. Tythes by any and yt such be admonished as they see cause.'⁽²⁾

The often doleful reports by the Quarterly Meetings' representatives to the Yearly Meeting showed that this was no easy task. Some counties could boast a better record than others, but all had their pessimistic reports at various times. The Staffordshire representatives could often report: 'Our Testimony is maintained' or words to

1. Minutes of the Yearly Meetings of Friends (M.Y.M.) Vol I 2.4 month. 1691. p.267
2. M.Y.M. Vol. II 4.4 month. 1696. p.141

the same effect, but in 1718 the four representatives to the Yearly Meeting had to admit:

'We ought to acknowledge (in our visiting families) and Enquiring into ye Affaires of Truth, some friends (we find) are not so faithful in their Testimony on that account as could be desired, and some few of those whose understandings are not so clearly convinced as might be wished of the unlawfulness of paying Tythes especially those called Improprate.'⁽¹⁾

There were also hints that all was not as well as it could be in the reports of 1722, 1726, 1728-33 (inclusive), 1743, 1752, 1760, 1762, 1763 and 1768. This was by no means exceptional, and many counties reported unfavourably almost every year.

In 1728 the Meeting for Sufferings took steps to deal with a national deterioration in the faithful testimony. A combination of continued backsliding together with the need to amass suitably horrifying evidence in the long campaign to exempt Friends from all but summary jurisdiction for non-payment of tithe⁽²⁾ caused the whole problem to be thrashed out at length by the Meeting for Sufferings. Learning that,

'Some under our profession in ye Countyes declare themselves not convinced in Judgmt. as to non-paymt. of them.'

the Meeting set up a committee to inspect all books and treatises published on the subject of tithes and to:

1. M.Y.M. Vol. V. p.327

2. See below pp. 200-222 and N C Hunt op. cit. Chapter VI passim for a good narrative account.

'reprint such passages as appear most strong and Pertinent to ye Poynt ... adding such advice from themselves as they may think necessary for ye Enforceing ye Reasons and Arguments therein contained for ye support of this our said Christian testimony.'⁽¹⁾

Backsliding, however, continued. The desire to present well-documented evidence in the campaign for the Tithe Bill meant that most of the evidence is of the period up to 1736. After this point, however, the Yearly Meeting and the Meeting for Sufferings still required to receive up to date accounts of the situation with regard to the payment of tithes. The committee, working on the Epistle from the Yearly Meeting in 1769, considered the testimony in Essex to be so badly maintained:

'That it be proposed to the Yearly Meeting to appoint a proper number of solid, judicious and concerned Friends to visit them in their Quarterly and Monthly Meetings in order to afford them such advice & assistance as may be found expedient.'⁽²⁾

This advice was accepted, and a committee visited the Essex Quarterly and Monthly Meetings in 1770. There they heard objections to the Quaker insistence on non-payment, giving:

'all an opportunity of freely expressing their sentiments & objections, which being answered we proposed to each Monthly Meeting the appointing of Friends to visit and deal with the unfaithful.'⁽³⁾

1. M.M.S. 28.4 month. 1728. Vol. XXIV pp.221-2
 2. M.Y.M. Vol. XIII 1769. p.521
 3. M.Y.M. Vol. XIV 1770. p.109

From the records of the Books of Sufferings, it has been possible to obtain a picture of how far tithes were refused, and how tithe owners reacted to defaulters. Special reference has been made to the lists of sufferings sent to the Yearly Meeting from Staffordshire. The Books of Sufferings contain lists of payments incurred by Friends for their refusal to pay tithes, and other obligations which their consciences could not accommodate, such as Church Rates. The immediately striking fact is the disparity between the number of payments listed in the Sufferings books, and the total number of Quaker households known to exist in Staffordshire. The Quaker community in Staffordshire was at its strongest at the beginning of the period under study, there being about 131 Friends' households in the county. By 1735, this had slumped to about 65, and the number continued to decline throughout the rest of the century⁽¹⁾. By 1809 the Quaker community was down to approximately 20 households mostly centred around Leek, in the North-Western corner of the county. The number of Friends whose sufferings are listed shows a corresponding fall; but throughout there are far fewer names in the sufferings list than number of households. In the period 1690-1740, when the largest numbers of sufferings are recorded, only rarely are there more than ten or a dozen Friends listed, the maximum number

1. I am indebted to Mr Dennis G Stuart of the University of Keele for permitting me to make use of this information taken from the Minute Books of the Society of Friends in Staffordshire. I would like to acknowledge my indebtedness to him also for sharing with me his exhaustive knowledge of many aspects of Quakerism in Staffordshire.

being fifteen in 1728⁽¹⁾. Admittedly the figures should be treated with a certain degree of caution. The Yearly Meeting on occasion complained of lists of sufferings not being complete, and it is possible that the total number of sufferings given in Appendix IV should be higher. On the other hand, Staffordshire Friends seem to have been scrupulous in the manner in which they compiled their sufferings, and they were always a sufficiently small community to permit the accuracy which can derive from local knowledge. Staffordshire Friends were never singled out for criticism, as were various other counties, for not forwarding their lists accurately and promptly. It is unlikely that the total number of sufferings is greatly understated. At all events the over-all trend is clear. Three explanations may be offered. In the first place, many Friends were concentrated in the town areas of Leek and Stafford. The tithe of towns, as Christopher Hill has shown for an earlier period, tended anyway to be negligible, consisting only of small payments of a penny or two for 'Easter Dues' and certain other small money payments in lieu of the tithe of garden produce⁽²⁾. If Quakers refused to pay these small dues, as many would, then the tithe owner had to consider whether it was worthwhile to pursue his claim. After all a suit for tithes was expensive, lengthy and often frustrating. In many cases, especially before 1696 the answer would be a definite "No". It is possible also that a certain number of Friends were involved in

1. See Appendix IV

2. J E C Hill, op. cit. Chapters V and VI passim.

"Middleman" activities as mealmen, millers and the like. They were unlikely to have been tithed with any more success or diligence than town dwellers⁽¹⁾. Secondly many Staffordshire Friends occupied land which was tithe-free. Indeed by 1740, one Staffordshire representative to the Yearly Meeting went so far as to argue that 'most lands' in the county occupied by Friends were tithe-free⁽²⁾. It is probable that he was referring to lands in towns and lands covered by small modus payments as well as genuinely tithe-free land which was not extensive, and tended anyway to be on the large Demesne estates⁽³⁾. None the less, for fortunate Friends having tithe-free lands, there could be no cries of conscience. For Friends occupying tithable lands away from the towns the problem of why so few sufferings were recorded is more complex. Some may have paid surreptitiously and not appear in the list⁽⁴⁾. Others might have farmed land which produced insufficient tithable goods to make prosecution or distraint feasible. The final factor is one of personality. Certain incumbents may genuinely have felt that, where the sums involved were not large, the conscience of the Quaker should be respected. Those

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1. R T Vann: Quakerism and the Social Structure in the Interregnum. Past and Present, Vol. 43, 1969, pp.71-91. Vann notes that a much higher proportion of Friends were involved in these occupations in Buckinghamshire in the mid-seventeenth century than the rest of the population. This sample may well be atypical, however, as reference to his comparisons with Gloucestershire and Norfolk (p.89) indicates. Much more research is needed, but the present evidence does not indicate that Middlemen would have made a huge difference to the disparity between the number of sufferings in Staffordshire and the total number of Quaker households known to exist in the county in the early eighteenth century.
 2. M.Y.M. Vol. VIII. 1740
 3. See Appendix IX which notes the main exemptions to tithe. See also above Chapter II p. 56.
 4. See below pp. 187-188.

who were concerned with preserving a good reputation in the community had to consider whether prosecution of Quakers would cause discontent altogether disproportionate to the amount they had hoped to gain. There is no reason to regard every eighteenth century clergyman as avaricious and ready to grasp the last tithe penny. The differing characters and views of clergymen are essentially unquantifiable factors, but they clearly played their part. All in all, there can be no doubt that many Quakers were able to avoid payment of any tithe without damage either to their conscience or their pocket.

One aspect of Quaker tithe payment in these years which has been little remarked upon is the frequency with which incumbents and impropriators took the tithe in kind from Friends without being asked and without any warrant. Technically this was illegal, as the tithe owner had to be duly notified of the crop's readiness before being allowed to take his tenth. Mr Braithwaite has suggested that the technical illegality, rendering a man liable to prosecution for trespass, deterred many incumbents and impropriators from this course of action⁽¹⁾. The evidence is against this. Reference to the Books of Sufferings indicates that this was easily the most popular means of taking tithe, at least during the period of greatest tension. It did, after all, have the advantage of mutual convenience. The Quaker would not, of course, offer physical resistance, as others were likely to do if such a procedure were adopted. His conscience was salved. He could not be said to have connived at the payment of

1. A Braithwaite: Loc. cit.

his tithe. The tithe owner for his part would generally prefer a summary means of taking his dues rather than embark on what could be a long and tortuous procedure in the Courts, at considerable expense to himself. He could be sure that the Friend would not invoke the law against him, provided that only his tenth were taken. There may in fact have been explicit agreements to this effect. In the period 1690-1729 in Staffordshire, legal channels seem to have resorted to in only 7.5% of cases⁽¹⁾. For the rest tithe owners seem simply to have taken what was due to them with no questions asked. The following entry in the Book of Sufferings for 1690 is typical:

'William Silvester. Fradley. Aldestrey. Had taken from him for Tithes by Walter Spooner Farmer of Tithes, Wool, Hay and Corn. 7s.'⁽²⁾

Nor did this arrangement seem to lend itself to undue abuse. Friends listed such sufferings as seemed to them to be extortionate in taking more than the tenth. Only in a very small number of cases did Friends note that this summary procedure was abused. Indeed, it is quite common to find a codicil to the suffering, indicating that the tithe owner had not taken more than was his due. After ten sufferings taken from nine Friends in 1694 totalling £15.13. 0 it was noted:

'That the Tythes were taken from the aforesd. friends Exceeded not the pretended dues, as near as could be estimated.'⁽³⁾

The Books of Sufferings also revealingly show the extent of pro-

1. vide Appendix V
2. Book of Sufferings (B.S.) Vol. VII 1690: Staffs. p.537
3. B.S. Vol. VII 1694: Staffs. pp.537-542

secutions in Staffordshire. In the period under study, only eleven cases from Staffordshire went to Court out of a total of 1179 sufferings.⁽¹⁾ Except for an isolated case in 1816 when William Masters of Seighford was ordered in the Court of Common Pleas to pay £149. 4. 9 tithes and costs to the trustees of John Jervis for non-payment of tithes due in Chebsey⁽²⁾, all fell in the two decades 1690-1710. Only four Staffordshire Friends were imprisoned, none apparently for terms of more than a year, although John Bloor of Leek was detained in Stafford gaol for seven months for non-payment of two shillings and threepence Easter Dues to the Vicar of Leek. As Bloor was a day labourer such a penalty was indeed heavy, both on himself and his family who were left without maintenance⁽³⁾. Such cases, however, were exceptional. Although Staffordshire Friends were perhaps less liable to persecution than in many other areas, it cannot be denied that imprisonment for non-payment was comparatively rare, and became more so as the eighteenth century progressed⁽⁴⁾. The picture of a very large number of Quakers languishing in prison because they refused to pay tithe is in need of drastic revision.

The two Acts of 1696 providing summary jurisdiction did afford the tithe owner easy legal means of obtaining redress without too much expenditure or delay. None the less, in Staffordshire at least, the Act respecting Quakers was not quickly seized upon. In the years

1. See Appendix V

2. B.S. Vol. XXXV: Staffs

3. *ibid.* Vol. XII: Staffs

4. See below p. 215 and Appendix VI

1696 to 1729 only 26 Justices warrants were issued out of a total of 427 sufferings listed.⁽¹⁾ Significantly the 1730's, the decade of supreme Quaker attack on the Tithe Laws, brought an increase in the number of Justices' warrants used, although the total number of sufferings declined. Possibly, the controversy brought more tithe owners to realise fully for the first time the extent of the law, and also a wish to deal fairly with the Quakers, so as not to provide more fuel for their fire. In the 1740's and 1750's, the use of Justices warrants declined again, but in the period 1770-1850, about one half of the sufferings mentioned were dealt with by warrant. The easier form was, therefore, not generally used in Staffordshire until the main period of Quaker agitation was over. It is important to realise, however, that this did not mean that tithe owners preferred to use the cumbersome and penalizing older legislation. Many preferred the ease of summary withdrawal of what they estimated to be their tenth from the field.

For the Quaker who wished to avoid the wrath both of the tithe owner and his Quarterly Meeting, however, means of ~~semi~~-evasion or outright collusion were legion. One obvious way was to rent a farm from a landowner who also owned the tithes, thus paying rent and tithe together in a lump sum. The Yearly Meeting, which by its frequent references to concern about payment of tithes clearly indicated the extent of the problem, warned Quarterly and Monthly Meetings in 1693:

1. See Appendix V

'Not to let fall their Testimony agst. Tythes by Agreeing with Landlords in taking of their farmes or Houses Tythe free, by paying on that Acct. more Rent or any indirect way, or by neglecting to bring in an Account when but little is taken.'⁽¹⁾

The Epistle of the Yearly Meeting of 1698 found it necessary to repeat the warning that the testimony:

'Be not avoided or shunned by any indirect courses with landlords or otherwise.'⁽²⁾

One of the most convenient "indirect ways" which could be employed was for neighbours to ease a Friend's conscience by paying his tithe for him at the same time as his own, in return for a suitable consideration. In some cases, the tenth sheaf of corn was removed by a neighbour and given to the tithe collector when he paid his own tithe. Rev J C Atkinson remembered the assistance given to Friends in his Yorkshire parish:

'Dear old William and his co-religionists never paid a penny of the "cess" (rate) they were liable for. But somehow or other, when the churchwardens went their collecting rounds, a sheaf or two of corn, of an approximate value to the sum set down against their names, stood handy to the said churchwardens' hands, and no inquiry was ever made as to the person who had "conveyed" the Quakers' corn.'⁽³⁾

In the nineteenth century the Church of England periodical, 'The

1. M.Y.M. 5.4 month. 1693. Vol. I. p.339
2. Epistles of the Yearly Meeting of Friends. Vol. I. 1698
3. J C Atkinson: Forty Years in a Moorland Parish (Danby-in-Cleveland, Yorks. N.R.) 1923. p.224

British Magazine', always quick to defend to the virtues of established religion, and sneer at the pretensions of the dissenting sects, pointed out another practice which became common especially in towns when both Easter Dues and Church Rates were regularly required:

'One common practice among them (Quakers) is not to allow distraint to the full value but to have a tacit understanding with the clergyman to take a certain composition; and then as the churchwardens distrain for church rates, they request that the whole sum may be distrained for together in order to save the expences of two distress warrants. Is this submitting to religious persecution, or suffering for conscience sake?',⁽¹⁾

Such activities, of course, were just as much breaches of the faithful testimony. The Yearly Meeting of 1702 had thought it necessary to remark:

'In many places Advantages are taken upon Friends by making stoppages upon them in way of trade or by Debtors or otherwise or by kindred or Neighbours laying down the money for Tythes or Church Rates ... and that this way of proceeding Grows and Increases upon Friends in many places.'⁽²⁾

In many cases, neighbours were not slow to come to the aid of Friends whom they considered to have been unjustly treated by a tithe owner. A Rector or Impropriator trying to obtain payment through a court of law might find it difficult to obtain material witnesses to give

1. The British Magazine. Vol. IV. 1833. p.202. underlining mine.
 2. M.Y.M. 19.3 month. 1702. Vol. III. p.69

evidence for him. The Meeting for Sufferings in 1696 learned of many prosecutions in Lincolnshire against Friends in which neighbours refused to give evidence against them.⁽¹⁾ Richard Simpson of Keele (Staffs) found his neighbours similarly helpful. The Book of Sufferings for 1690 noted:

'Thomas Worthers, Priest of Keel aforesd. demanded of ... Richard Swyfon five shillings and 3d for small Tithes, and upon his conscientious Refusall to pay it ye sd. Priest comenced a Suit against him, but some of ye Neighbours Compassionating the poor Man's Case, as ye said Richard was Receiving money at ye Market for Goods Sold, rather than he should goe to prison upon a Surprisall, took of ye money to pay ye Priest and satisfie ye Law to ye Value of one pound fourteen shillings.'⁽²⁾

William Williams, the Vicar of Rye (Kent) found an even more startling mode of community sanction against his attempt to impose tithe of fish in 1697 on a local Quaker, William Oake. With a warrant from the local Justices of the Peace, parish constables took from Oake's house in lieu of the tithe:

'46 lb. of new Pewter wch. cost him 10d per lb. and also a new Table which cost him 10s in all 48s.8d for about 16s.3d demanded of wch. 4s.1½d was but the Priests pretended due.'

The neighbours frustrated the Vicar's attempt, because as the report continued:

'The Country people Refused to buy any of the sd. Goods, giving

1. M.M.S. Vol. XI. p.59

2. B.S. Vol. VII: 1690. Staffs

out they were stoln.'⁽¹⁾

As well as paying tithes, there were a few instances of Quakers committing the ultimate decimarial sin of tithe owning. Naturally, those few who did own tithes took great care not to advertise the fact and acted through attorneys and agents. None the less, certain instances were ferreted out by diligent Quaker-baiters. There was an instance of Friends in Alveston (Gloucestershire) who "bought and enjoyed for many years ... half the tithe of the lordship of Tockington" at the beginning of the eighteenth century⁽²⁾ while Felix Farley's Journal in 1785 published the following interesting information about a prosperous Quaker lawyer of Bristol, William Reeve. After suffering badly as a result of a trade recession, his property had to be auctioned:

'It was then discovered that the unfortunate gentleman, although a Quaker, was the owner of the tithes of the Parish of Brislington!',⁽³⁾

Evidently the bizarre occurrence of Quaker tithe ownership had become sufficiently widespread at the beginning of the eighteenth century to attract the notice of the Yearly Meeting. That body noted sternly in 1706:

'Some few also here and there, having Estates in Improprate Tythes (wch. are the same in Nature, Ground & Root with the Tythes paid to the Priest) do not forbear to receive them, to

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1. M.M.S. 17.11 month. 1696/7. Vol. XI. p.125
 2. J Latimer: Annals of Bristol in the Eighteenth Century (1893) p.178. I am indebted to Mr M J Thomas of the University of Warwick for this information
 3. J Latimer: Op. cit. pp.285-6

the great dishonour of our Holy Profession.'⁽¹⁾

IV

The solid groundwork of the Quaker agitation against the tithe laws was, of course, the corpus of evidence built up over the years, of persecutions which the Quakers endured for their faith. Martyrdom in the defence of a firmly held religious principle was considered to be the strongest persuader of the ruling Whig conscience. The story of Quaker strategy and tactics, culminating in the assault of 1736 has been very well told by Dr Hunt⁽²⁾ and it is not intended, therefore, to dwell in detail on the Quaker Tithe Bill of that year. It should be realised, however, that almost from the passing of the Act of 1696, and well before the sustained pressure of 1729 to 1736, Friends, through the medium of the Meeting for Sufferings, had been agitating for a change in the new law. The Meeting took great care to ensure that it had the fullest body of statistical evidence available on the operation of the Act. This necessitated the co-operation of the Quarterly and Monthly Meetings, who were to send up complete lists of sufferings sustained. Soon after the passing of the Affirmation Act, the Meeting ordered a thorough inspection of its Minutes.

'And also ye Letters yt. mentions ye late sufferings of ffrids. by the Justices upon ye late Acts for Tythes etc. And where any are defective to write to ye Countyes about ym. and to get

1. M.Y.M. Vol. III. 17.3 month. 1706. p.269
2. N C Hunt, op. cit. esp. Chapter VI

ym. attested yt. they may be fitt to present to authority for relief.'⁽¹⁾

Soon after this, the Meeting was issuing reprimands to Quarterly Meetings who had not sent up all their sufferings:

'Benj. Bealing to send to ye countyes where he finds defects in the late Sufferings sent up by the small Tyth Acts, and to Transcribe the said Sufferings of ye Countyes alphabetically in Wide Lines for this Meet's perusal.'⁽²⁾

The Meeting for Sufferings did not have to wait long before receiving reports that the new Act was not working as satisfactorily as Friends had hoped. In early 1697, some Cumberland Friends reported "great and heavy sufferings sustained by the late Act", arguing that the Justices had used the powers given them by the Act to award excessive costs, which, they alleged, were used to finance magisterial eating and drinking sessions⁽³⁾. This particular allegation was an isolated one, but the Cumberland Friends were soon supported in their main charge of excessive costs, together with the additional most important allegation that the new Act was being deliberately circumvented by tithe owners who chose still to subject Friends to the formal and expensive procedures in Ecclesiastical or Exchequer Courts for sums under £10. A Committee of Friends from Norfolk, Essex, Somerset, Gloucestershire, Westmoreland, Cumberland, Wiltshire and Hampshire, who had all complained, was set to work in January 1697 to

1. M.M.S.: Vol. XI. 27.9 month. 1696. p.90

2. ibid. Vol. XI. 2.5 month. 1696. p.247

3. M.M.S. Vol. XI. 25.10 month. 1696/7. p.107

examine the cases complained of:

'and prepare something ... to laye before the Parliament, in order for Relief.'⁽¹⁾

Between 1696 and 1715, Quakers were using the fact that the 1696 Act was only temporary and could be revised to attempt a revision which would prohibit tithe owners from making use of the more expensive methods of prosecution when the sums were within the scope of the Act, i.e. under £10. Benjamin Bealing, the indefatigable clerk at the Chamber in Devonshire House⁽²⁾, whose administrative skills contributed in no small measure to the impact made by Friends as a pressure group in this period, drew up in 1698 a list of the cases in which tithe owners could have used the summary jurisdiction but chose not to do so⁽³⁾. When the Act came up for its first renewal in 1699, the Friends were ready to present Bealing's list to Parliament indicating how much the Act was being evaded; and a small Committee was appointed to lobby certain members of the House of Lords known to be favourable, in order to get them to introduce a clause preventing Prosecutors claiming less than £10 from acting other than before Justices of the Peace⁽⁴⁾. Although several temporal Lords were said to favour the proposal, nothing came of it. It is interesting, however, to notice just those techniques of parliamentary

1. M.M.S. Vol. XI, 1.11 month. 1696/7. p.112

2. Bealing's official title was 'Clerk at the Chamber'. As recording clerk he was the paid secretary of the Society of Friends. The title 'Recording Clerk' has been in use since the early nineteenth century.

3. M.M.S. Vol. XII. 17.10 month. 1697. p.65

4. *ibid.* Vol. XIII. 6.11 month. 1698/9. pp. 92, 153 and 169.

lobbying which were used so widely between 1729 and 1736 : being used on a smaller scale in the 1690's.

At the same time Friends were mounting an even larger campaign to limit the amount of persecution sustained in the Exchequer. A list was drawn up in 1694 of cases of exceptional severity. In May of that year, the Meeting for Sufferings:

'Agreed that some of the most notorious cases relating to the secrete Proceedings of some adversaries in the Court of Exchqr. be chosen out and annexed to a Petition to be presented when ready to the Barons of the Exchqr. at their Chambers.'⁽¹⁾

The Barons of the Exchequer, the Meeting was pleased to hear, received the petitioners in a friendly manner:

'Saying they would conferr one with another for the Redress-
ing of Friends sufferings by the Court.

'And that they lookt upon it as a Matter of Conscience to ym
of doing Friends right ... and wt. right they could doe
friends, they promised to do ym.'⁽²⁾

The Quakers were to learn, not for the last time, that fair words did not necessarily presage action. Criticism of the Exchequer Court continued. Especially irksome was an apparently growing practice of tithe owners to apply to the Court for a Sequestration order to be granted without the motion being put in open court. Friends also complained of "Feigned returns" of the writ 'Non est

1. *ibid.* Vol. IX 4.3 month. 1694. p.160
2. M.M.S. Vol. IX 16.9 month. 1694. p.252

Inventus' from the Ecclesiastical Court, and the sequestration of their goods while the Friend was still in prison.⁽¹⁾

In 1700, a selection of the cases collected by Bealing were printed and sent out to the various Quarterly Meetings. It was decided that these cases should be used to persuade local Members of Parliament of the justice of Quakers' pleas. Even more interestingly, the Meeting judged:

'It will be of service to Truth to manifest the Priests' severe proceedings agst. our ffrids, and wn. any frids. to to the Bps. to acqt. ym. of frids. sufferings in the Excheq ... yt. they may deliver ym. the said printed cases.'⁽²⁾

In 1706, a revised edition of the cases of persecution in the Exchequer was delivered to both Houses of Parliament⁽³⁾, and in 1709 Bealing again revised the cases, and brought them up to date. After this revision, the Meeting for Sufferings deputed a Committee of fifteen leading Friends to bring to the attention of Parliament the continuing sufferings of Friends on account of their conscience. The House of Lords, previously regarded as the most fertile ground for Quaker cultivation, again showed a certain sympathy. Several Peers told the Committee:

'they were willing to discourse the matter among themselves how friends might be relieved in ye Case of Tythes, and that they were of opinion it must be done by Act of Parliament.'⁽⁴⁾

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1. *ibid.* Vol. XIV. 10.3 month. 1700. p.203
 2. *ibid.* Vol. XIV. 17.3 month. 1700. p.213
 3. *ibid.* Vol. XVIII. 25.11 month. 1705/6. p.24
 4. M.M.S. Vol. XIX. 1709. 9.10 month. p.337 & 16.10 month. pp.399-40.

It was in these early years, that the Parliamentary Committee was established by the Friends. This had two purposes. Firstly it was to report to the Meeting for Sufferings on debates and proposals put forward in Parliament which could affect the Quakers; and also to find out the temper of Members concerning any proposals which the Friends themselves might wish to bring forward. As Dr Hunt has shown, both of these activities were carried out with a thorough professionalism during what he calls the 'Tithe Bill Campaign'; but their origins are earlier. In 1707, for example, three Bills were introduced into Parliament which would, if passed, have had a great influence on Friends: A Bill for the Better Setting forth and Payment of Tithes, a Bill concerning Forfeited Impropriations in Ireland, and a Bill for preventing delays and expenses in Suits of Law and Equity. When the first of these Bills was brought in, in February the Meeting deputed certain Friends to copy the Bill:

'and doe wt. they can on friends behalf.'⁽¹⁾

It was thought necessary to send Friends to Westminster to see how the Bills were progressing and one of them, George Whitehead, reported thankfully that the Bill for setting forth Tithes would not be any further proceeded with in the present session. The Meeting evidently thought the activities of its Parliamentary Committee sufficiently important to pay the expences incurred. In February 1707 it was noted that a Bill was drawn:

1. *ibid.* Vol. XVIII. 28.12 month. 1706/7. pp.223-5

'on Thos. Zachary etc. for Ten Pounds made payable to John Field for defraying the Charges in attending the Parliament.'⁽¹⁾

Such payments were later to become commonplace.

The Parliamentary delegates were to manifest their greatest usefulness to date during the debates of 1715 concerning making the Act of 1696 perpetual.⁽²⁾ It appears that there was pressure from certain supporters of the rights of the Anglican church to introduce into the Bill a new clause for making more effectual the payment of small tithes. Against this, the Friends, armed with yet more evidence of prosecution and persecution, were trying to influence the House to introduce a new clause giving the Friends new safeguards. In May 1715 when the Bill reached its Committee stage, the Friends Parliamentary delegates were requested:

'to take what care they can with the Committee to get ye Matter so settled as to prevent vexatious suits, and that John Whiting and Theodor Eccleston abstract the most remarkable and exorbitant seizures of friends Goods by Exchequer process to be made use of to the Committee as occasion may offer.'⁽³⁾

The Committee eventually decided to report back that in effect the existing arrangements should still stand. The Friends delegates stated that they had:

'Earnestly Endeavoured with the Committee to get ye Restraint desired but without success.'⁽⁴⁾

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1. M.M.S. Vol. XVIII. 28.2 month. 1706/7. pp.223-5.
 2. The Act eventually passed was I Geo. I cap.6.
 3. M.M.S. Vol. XXI. 13.3 month. 1715. p.354.
 4. ibid. Vol. XXI. 18.3 month. 1715. p.356-7.

The "restraint desired" of course was to compel the clergy only to resort to the summary jurisdiction of Justices of the Peace when the sums involved were under £10.

It may legitimately be doubted how effective this early Quaker organisation had been. Certainly, Friends had seen to it that they were on the scene when any anti-Quaker legislation was being framed; and considering the strength of anti-Quaker feeling among certain sections of the clergy, the very fact that Friends' privileges under the 1696 Act were preserved in 1715 may perhaps be regarded as a success. The Friends themselves, of course, did not regard it as such. The Minutes of the Meeting for Sufferings tell how carefully they drew together the evidence of persecution in their attempt to persuade both Parliament and Episcopacy of the justice of their case. None the less, it is hard to escape the conclusion that Parliament would have legislated in exactly the same way had there been no outside lobbying from Devonshire House. This could not be said in 1736 when the campaign was larger and when Friends' stories of clerical rapacity and hard-heartedness fell on more receptive and sometimes more influential ears. The significance of Quaker agitation from 1696 to 1715 lies more in its pointers for the future than in its achievement.

The Quaker Tithe Bill of 1736 called forth as much pamphlet literature as any other subject in the decade. It was presented to Parliament at a time when anti-clerical feeling was at its height. In 1730, a Bill had been introduced to prevent the clergy from claiming tithes which had not been paid for a long period of years.⁽¹⁾

1. N Sykes: Edmund Gibson, Bishop of London (1926) pp.150-2. See also below, Chapter VII, p. 242-244.

Newcastle's influence had stifled this. In 1733 only Walpole's prompt action prevented the passing of a Bill which would seriously have limited the Ecclesiastical Courts' competence to hear tithe cases. The Quaker campaign was therefore not conducted "in vacuo"; and the Established Church saw itself as besieged on every side. To many of the clergy, including the Bishop of London, Edmund Gibson, the Quaker Tithe Bill came to symbolize an attack on the entire foundation of Anglicanism. The reaction, both pro and anti the Bill, cannot therefore be understood adequately merely from the changes it proposed. Indeed, these changes did not amount to very much more than Friends themselves had been trying to obtain in 1715. The great difference was that Justices were to be competent to hear cases concerning non-payment of tithe without monetary limit⁽¹⁾. If a Quaker did not appear to answer the charges, then the Justices would make an "absolutely final and conclusive award" to the tithe owner, rather than hand the matter over to one of the Courts. Indeed, the matter should only go to the Equity Court if the Quaker contested the legal right of the tithe owner to the dues he was collecting. None the less, the Bill provided for recovery by distress and sale of goods if the amount of money due - together with the costs - were not tendered. Furthermore, if distress and sale was not sufficient to meet the demand, then the defaulting Quaker would be committed to

'the common jail of the county ... there to remain without

1. See Parliamentary Debates Vol. XIII, 1735-6, pp.459-473.

bail or mainprize until full payment be made to the party or parties so complaining.'

Dr Hunt has described in great detail the stages by which the Society of Friends promoted its Tithe Bill. Converts to the Friends' point of view were sought by the dual means of propaganda and lobbying. In 1731, the Meeting for Sufferings ordered the reprinting of 3000 and later 4000 copies of a work by a Westmoreland Justice of the Peace of the 1650's, Anthony Pearson, "The Great Case of Tythes"⁽¹⁾. This work, one of the most skilful attacks on the tithe system, carefully blended appeals to the pity of the reader at the plight of the:

'numbers of poor men brought thither (Exchequer) ... every term from the most remote parts of the Nation and some of them not for above twelve pence.'⁽²⁾

with attacks on the economic inefficiency of the system which kept a disproportionate part of the country in pasture, as arable farming was not viable when the full tenth was taken. Pearson's work, which was circulated widely throughout the country, was issued, it must be admitted, as much to convince Friends themselves of the justice of refusing tithe payments - a task which clearly needed doing - as to convert others. Friends attempted this latter task by using their new traditional methods of collecting facts of prosecutions sustained since 1696 to illustrate how badly the existing Act was working, and publishing them as widely as possible. The

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1. M.M.S. Vol. XXV. 15.8 month. 1731 and 22.8 month. 1731 pp.75 and 79
 2. A Pearson: The Great Case of Tythes (1730 ed., originally 1657) pp.67-8.

petition of the Society presented to Parliament in 1736 stated that since 1696:

'There have been prosecuted in the exchequer ecclesiastical and other courts in England & Wales for demands recoverable by the said Act above eleven hundred of the people called Quakers, of whom near three hundred were committed to prison and several of them died prisoners.'⁽¹⁾

Many of these cases, furthermore, "were frequently commenced for trivial sums of 4d. to 5/-". As the "favourable intent" of the 1696 Act was therefore frustrated, the Friends humbly submitted:

'Whether such prosecutions, frequently attended with excommunications and imprisonments, be not grievances which call for redress, and whether it be not reasonable to restrain the prosecutors from proceedings so ruinous and destructive.'

These views were buttressed by an important pamphlet, written anonymously, but obviously having the sanction, if not the drafting, of the Quaker hierarchy. The 'Brief Account of Many of the Persecutions of People called Quakers in Exchequer, Ecclesiastical and other Courts' used the same arguments as the Petition, but analysed the sufferings sustained, county by county. It concluded that the following prosecutions of Quakers had taken place since 1696:⁽²⁾

<u>TOTAL</u>	<u>Exchequer Court</u>	<u>Ecclesiastical Court</u>	<u>Other Courts</u>
1180	659	367	154
	<u>Imprisoned</u>	<u>Died in Prison</u>	
	302	9	

1. J Gough: op. cit. p.282-3

2. Anon: A Brief Account of the Prosecutions ... of Quakers. 1736 Friends House Tracts 145/1.

The pamphlet, also itemised some of the most grievous sufferings, such as Edward Walker of Thornton-le-Moors (Yorks, N.R.) who was imprisoned in October 1699 for non-payment of tithe amounting to 3/4 and was not released until July 1709 and Jonathan Peasley of Alveston (Gloucs.) who was sued in the Exchequer for tithe worth £7 and had £237. 5. 0 taken by sequestration in 1717.

There was no time for the Church of England to rebut this well-documented tract in 1736. The Church's defence tended to be of a much more general nature. No fewer than 38 petitions from the clergy were presented in opposition to the Quaker petition⁽¹⁾, all of them in greater or lesser degree protesting that the Bill, if passed, would circumscribe the avenues open to the clergy to recover what was, after all, a right duly sanctioned by custom and law alike. The clergy of Middlesex protested that the Bill was:

'extremely prejudicial to themselves and brethren excluding them from the benefit of the laws then in being for the recovery of tythes and other dues and thereby putting the clergy of the established church upon a worse foot than the rest of His Majesty's subjects.'⁽²⁾

The ablest pamphlet to emerge from the Church of England was the 'Country Parson's Plea against the Quakers' Bill for Tythes' widely supposed to have been written by Edmund Gibson himself.⁽³⁾ It cunningly combined a refutation of the justice of restricting legal

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1. N Sykes: op. cit. pp.150-165.
 2. Parliamentary Debates. Vol. XIII. 1736. p.452.
 3. See Gough: op. cit. p.284.

redress to certain channels, with a wider argument, hinting that if this Bill were to pass then the system upon which the Established Church was based might crumble and fall.

The Bill came very close to passing. With somewhat hesitant support from Walpole, the Bill passed through the Commons by 164 votes to 48, Lord Hervey remarking that everyone who spoke for the Bill:

'gave the bishops and the parsons very hard, as well as very popular slaps.'⁽¹⁾

In the Lords, the Bishop of Salisbury argued that the Bill was an unwarrantable encroachment on property, and that a Justice of the Peace might be expected to have a "natural partiality" against tithes⁽²⁾. Viscount Harrington disagreed, arguing that there were many Justices of the Peace who were tithe owners, but the strength of the bishops in the Lords defeated the Quakers. The Bill was lost there by 54 votes to 35, fifteen bishops voting against the measure, and, not surprisingly, none for it.

It was not until after the failure of the Bill that close analysis was paid to the facts about persecutions given in the "Brief Account". Following the lead given by the clergy of the Diocese of London, there was another spate of publications, between 1736 and 1740, "Examining" the Account, which were met by "Vindications" of the Account from the Quaker side, and "Defences" of the "Examination"⁽³⁾.

1. (ed.) R Sedgwick: Memoirs of the Reign of George II, by Lord Hervey (1931). Vol. II. p.534.
2. Parliamentary Debates: Vol. XIII. p.489.
3. A good collection of these Tracts is preserved in the Library of Friends House.

In each of these, the prosecutions alleged by the Quakers to have been sustained, were subjected to minute scrutiny, the clergy involved often giving their version of the prosecution. These publications, from the different dioceses, contain some of the most revealing information we have (albeit quoted to support a particular case) about prosecutions of Quakers. They also reveal that the Friends had overstated their case. Presented as part of a campaign against the jurisdiction of the Ecclesiastical Courts, the "Brief Account" had concentrated its attacks on the clergy. The various "Examinations" had no difficulty in deflecting a certain amount of criticism, by pointing out that a large number of prosecutions had been commenced by lay impropriators or their tithe-farmers. Of 30 prosecutions instanced in the Diocese of Lichfield and Coventry, for example, only 12 were actually commenced by clergymen of the diocese. Of these twelve, the "Examiner" went on to argue, five did not fall within the scope of the 1696 Act, and it was doubtful whether a further three did. As one set of Justices had absolutely refused to hear a relevant case⁽¹⁾, only three cases remained in the entire diocese where the incumbent could have had recourse to the Justices but preferred not to⁽²⁾. The Quakers retorted that in some cases, vicars and rectors had deliberately waited for two, three or more years before commencing prosecutions so that the

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1. The Justices of Coventry refused in 1724 to hear a case against two local Quakers brought by the Vicar of Foleshill, Edward Jackson.
 2. Anon: An Examination of a Book lately Printed by the Quakers ... so far as the Clergy of the Diocese of Lichfield & Coventry are concerned in it. 1739. pp.55 and 62-3.

accumulated sums demanded would be above £10 and beyond the scope of the Act. They also made the point that ministers of the Church of England had been involved in prosecuting Quakers who could not afford the burden of prosecution. Here, however, they transgressed the line between fact and morality. It was one thing to state that men deliberately connived at avoiding the Act; quite another to argue that the minister was wrong to recover dues to which law and custom entitled him. Certainly, facts which the Friends would not have wished to receive wide publication were brought into the open by the pamphlet war. The Friends in the Quarterly Meeting of Staffordshire, for example, would not have been pleased to read Henry Cotton's assertion as Vicar of Uttoxeter, that:

'We have only two Families who are Quakers in this Parish, and they pay their dues without scruple.'⁽¹⁾

Nor was it always safe to believe implicitly the figures of those Friends stated as being in prison. Among these was included Thomas Shipley of Loxley (Staffs.), imprisoned in Stafford Gaol in 1700 for non-payment of tithe oats worth 15/-⁽²⁾. Shipley himself stated:

'He was not long there, the Money being paid as before by his landlords and that he was never confined in the County Gaol, but was allowed by the Keeper of the Prison to live and walk in what part of the Town he pleased.'⁽³⁾

The teeth of the controversy were blunted as it wore through more and more pages. The greatest condemnation of the Quaker attack,

1. *ibid.* pp.17-18.

2. B.S. Vol. IX. 1698-1700: Staffs. pp.843-47.

3. Anon: An Examination ... so far as the Clergy of ... Lichfield & Coventry are Concerned in it. p.17.

however, was hardly mentioned. The simple fact was that by 1736 the height of the persecution complained of had passed. Appendix VI indicates the number of Friends imprisoned between 1690 and 1800, together with the total monetary value of the sufferings sustained, according to the returns from the Books of Sufferings. It is clear from these figures that the most severe persecution was felt at the very beginning of the period with an average of 111 Friends imprisoned per year during 1690 to 1696. After 1695, the number declines steadily until by the period 1730-1735 only 1 or 2 Friends were reported as being in prison for their refusal to pay tithe. The lumping together of sufferings from 1696 to 1736, therefore, gives a misleading picture. The Quakers indeed required legislation in 1736 less than at any previous time. The vast bulk of their argument about persecution was out of date. As reference to Appendix IV shows, also, more recourse was being had to summary jurisdiction in the 1730's than ever before.

None the less, the Quaker effort was not spent after 1736. The prospect of getting some form of enactment which would lessen their liability to expensive prosecution remained very firmly in the minds of Quaker leaders. Between 1748 and 1754 the Friends were again putting out feelers with a view to introducing a Bill along the same lines as that of 1736. The tactics were much the same. A delegation was instructed at the end of 1750:

'to represent to some Proper Persons the Grievous Sufferings which some Friends have undergone and to which they continue

to be exposed.'⁽¹⁾

The Earl of Chesterfield advised the Friends to apply to the Archbishop of Canterbury. Accordingly, early in 1752 a deputation presented their plans to the Archbishop. The main strength of Quaker arguments had been turned against proceedings in the Ecclesiastical Courts, and a draft Bill had been prepared in 1751 to deprive the Ecclesiastical Courts of the power to have Friends imprisoned for non-payment of dues:

'No sentence of Contumacy or any Certificate or Significavit of the same in any such Processes against the People called Quakers shall extend to the obtaining any Writ de Ecommunicato Capiendo or any Warrant for the Imprisonment of any of the said People.'⁽²⁾

The Archbishop, however, persuaded the Friends that the Bill should not at that juncture be introduced, as the main body of the clergy were already alarmed, and as in 1736:

'Petitions from them in all parts of the kingdom might be expected and warm opposition.'⁽³⁾

Nonetheless, he promised:

'at the same time to confer with some persons in high stations in order if possible to find out some expedient that might make both sides easy.'

1. M.M.S. Vol. XXIX. 21.10 month. 1750. p.63.

2. B.M. Add. Mss. 33052 f. 326.

3. M.M.S. Vol. XXIX. 8.1 month. 1751/2. pp.75-8.

Such a promise was sufficient to persuade the Friends to delay their application, in much the same manner as they had been persuaded by Walpole in the 1730's. The delay was of no profit to them. The Earl of Chesterfield, who seems to have acted in this period as sympathetic adviser to the Friends on parliamentary temper, told the Committee that ministerial opposition was the main stumbling block⁽¹⁾. By 1753, the Meeting for Sufferings had grown tired of waiting for the ministerial wind to change. The Parliamentary Committee, having apparently tested various opinions, reported that it had:

'Ground to apprehend ... that an Exemption from the present power of the Ecclesiastical Court ... could scarcely be obtained.'⁽²⁾

The only compromise which had been proposed was one which would have allowed the Ecclesiastical Court to issue certificates to the Civil Courts for them to proceed to sequestration. This was rejected by the Committee on the grounds that it would lessen the burden in the Ecclesiastical Courts only to increase it in the Temporal. On 5 March 1753 the Meeting for Sufferings agreed to call off the attempt, noting curtly:

'It is prudent to suspend all further proceedings in this affair.'⁽³⁾

The next concerted attempt was in 1770 when application was made to the new Speaker of the House of Commons, Sir Fletcher Norton, who

1. *ibid.* 6.10 month. 1751. pp.145-8.
 2. *ibid.* 3.2 month. 1753. pp.235-8.
 2. *M.M.S.* Vol. XXIX. 5.3 month. 1753. p.238.

in true Walpolean style, assured the Friends that they were:

'highly deserving of the Protection they enjoyed.'⁽¹⁾

He also agreed to inspect the rejected Bill of 1736, and to speak to members of the Ministry as well as certain bishops. In 1772, Mr Thomas Gilbert brought in a Bill which would have made summary jurisdiction before Justices of the Peace compulsory for any case of non-payment of dues concerning Quakers. This, however, was hastily withdrawn when the extent of clerical opposition was realised.⁽²⁾

The Parliamentary Committee had to trim their sails, and they warned the Meeting for Sufferings that all the Friends could hope to do was to obtain relief from the worst excesses of the prosecutions in Ecclesiastical and Equity Courts:

'To direct or point out in what ^{ways} ~~made~~ this relief should be granted would be to admit that they have no scruples against paying tithes, provided they are taken from them in such a specific method.'⁽³⁾

Significantly, the Report of Parliamentary Proceedings did admit that prosecutions were now fewer, and that activity must now be directed towards relieving those few who were still undergoing hardship.

No further legislation was introduced by the Friends at this point, although the Speaker did inform them in 1774 that he expected that a Bill would shortly be put before Parliament. The Quakers did,

1. *ibid.* Vol. XXXIII. 29.5 month. 1772. pp.90-97.

2. *ibid.*

3. *ibid.*

however, retain their interest in parliamentary activity. From 1774 there appears yearly in the Minutes of the Meeting for Sufferings a list of gratuities paid out of Quaker Funds to various parliamentary officers for their work on behalf of the Friends. The Meeting was prepared to pay to keep the lines of communication open and efficient. In 1774 the following payments were received:

'Mr Chas White, Solicitor of ye House of Commons	£ 2. 2. 0
To the Doorkeepers of ye said House	2. 2. 0
To the Messengers and Chamber Keepers @ do.	2. 2. 0
To the Doorkeepers at the House of Lords	4. 4. 0
	<hr/>
	£10. 0. 0 ⁽¹⁾

The great days of Quaker parliamentary pressure, however, were now over. Large scale lobbying gave way to altogether more discreet approaches. When in 1793 it was decided to make further application to Parliament "at some suitable season"⁽²⁾, the Meeting for Sufferings noted no great lobbying activity. The Friends deemed 1795 and 1796 as "suitable seasons", although they were years of repression when it was becoming fashionable to regard any measure of reform as at best unpatriotic and at worst Jacobinical. In March 1796 a petition was presented to Parliament signed by 38 Friends representing:

'the suffering Situation to which they are subjected both in Person & Property by the conscientious scruple that it is well known they entertain against the payment of tithes.'⁽³⁾

Substance was given to the petition by reference to seven Friends then

1. M.M.S. Vol. XXXIII. 2.12 month. 1774. p.381
 2. ibid. Vol. XXXIX. 14.6 month. 1793. p.278
 3. ibid. Vol. XXXIX. 1.3 month. 1796. p.602

imprisoned in York Castle "without any present prospect of release & though convicted of no crime."

Mr Serjeant Adair, meanwhile, had introduced two Bills in 1795 and 1796 to compel claimants for tithes from Quakers to distrain instead of imprisoning the offenders⁽¹⁾. It was soon clear that the Society had misjudged the opportuneness of the season yet again. Adair's first Bill passed through the Commons but was quickly thrown out in the Lords; while the second, with the political temperature rising all the time, was in March 1797 postponed for six months, thus effectively killing it before it reached the Lords. Sir William Scott, always a doughty champion of the rights of the Church of England, led the attack on Adair's Bill; and the Solicitor General sourly noted that the effect of the Bill would be to pick the pocket of the clergy and grind them to the dust. The £30.19. 0 which the Friends admitted to spending in connection with their activities over the Tithe Bill⁽²⁾ - a defisorily small amount in the context of late eighteenth-century politics, if accurate - was wasted.

Quakers do not appear to have been so active in the formulation of the Act for the better Regulation of Ecclesiastical Courts in England which became law in 1813.⁽³⁾ By this, the Ecclesiastical Courts were debarred from excommunicating those who refused to appear in their courts. The only civil penalty for excommunication, which was now restricted to purely spiritual offences, was to be imprisonment

1. House of Commons Journal Vol. 51 . See also (ed.) J. Holland & J Everett: Memoirs of James Montgomery (1854) Vol. I, p.280 and The Times 18 October 1796; 18 February, 7 March 1797.
2. M.M.S. Vol. XL. 5.8 month. 1796. p.39
3. 53 Geo. III c.127. See also below Chapter IX, p. 323.

for a period not exceeding six months. Whereas Justices were now given jurisdiction over tithe cases not exceeding £10 in the ordinary case, the limit in the case of Quakers was raised to £50. Although this was the first alleviation of the Quaker situation by Statute since 1696, the Meeting for Sufferings noted only that the Act had passed and that copies should be sent to each Quarterly Meeting⁽¹⁾. It was not until 1835, in the middle of the spate of legislation concerning ecclesiastical rights that Quakers finally obtained what their ~~predecessors~~^{predecessors} had been campaigning for. By the 'Act for the More Easy Recovery of Tithes'⁽²⁾ it was formally decreed that where a suit was in progress for recovery of tithes from a Quaker,

'No Execution or Decree or Order shall issue or be made against the person or persons of the Defendant or Defendants ... but the Plaintiff ... shall and may have his Execution or Decree against the Goods or other Property of the Defendant.'

Any Friend presently held in prison for non-payment of his dues was to be released. It hardly needs stating that this Act was passed at least a century too late to have any widespread significance. It represented only a much belated clearing up operation. The Legislature, meanwhile, had completely ignored the two Quaker petitions of 1833 and 1834, signed by 679 and 811 Friends respectively, which stated legal protection of any ecclesiastical impost to be:

'an unjustifiable interference on the part of the civil power.'

1. M.M.S. Vol. XLI. 8.6 month. 1813. p.500
 2. 5 & 6 Wil. IV c.74 Clause II.

and asked therefore

'that effectual measures may be taken for the entire abolition of tithes.'⁽¹⁾

Friends had to issue warnings after the passing of the Tithe Commutation Act against the payment of rent charge. In 1842, they advised Friends attending Tithe Commutation Meetings:

'that they should be very watchful in word or deed not to compromise our testimony.'⁽²⁾

They stated also that no Friend should act professionally in assisting the compilation of any Tithe Award; and that every Friend should avoid paying any part of the expenses of fixing or apportioning the rent charge. The whole question of rent charge was dealt with in an "Address to the Friends on Ecclesiastical Demands" issued in 1851. Its conclusion was that the improvements of the 1830's had

'removed some of the branches ... (but) has left the root untouched.'⁽³⁾

As the title under which rent charge was claimed was identical to that of the old tithe, the sanctions by Friends in support of their ancient testimony should be maintained. The fight should continue.

V

It has been observed that even at its height, persecution and prosecution for non-payment of tithe was endured only by a minority

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1. M.Y.M. Vol. XXIV. 3.6 month. 1833. p.360 and 28.5 month. 1834. pp.449-452.
 2. ibid. Vol. XXV. 27.5. month. 1842. pp.393-395.
 3. ibid. Vol. XXVI. 26.5 month. 1851. pp.249-268.

of Quakers⁽¹⁾. This fact, of course, did nothing to lessen the difficulties of that minority. Certainly in the 1690's, prosecution was frequent enough to be a constant source of worry to the Meeting for Sufferings, as may be seen from the following letter from Worcestershire in 1690, concerning a William Sankey - one of many which tell much the same kind of story:

That yesterday ... his old adversary Priest Vernon's Plunderers, to wit John Ashley, his Man and two Bayliffs came & took from him for Tythes pretended due to the Priest, nine Cows being all the poor man had, not leaving him one to give milk for his young child, which Cost him abot. Six or Seven and 20/- taken for about seven pounds etc. for a Judgment of 20/-.

Note that the Priest told the friend formerly yt. he had as good right to ye tenth as he had to ye ninth & this greedy Priest took 9 Cows for a tenth Cow the poor Man not having a tenth for him.⁽²⁾

In dealing with problems such as these, the Meeting for Sufferings showed itself to be an extraordinarily flexible body, fertile in ideas and manifesting a high degree of administrative competence. Above all, it worked in these years as a kind of ad hoc legal aid society to Friends undergoing prosecution. The constant plea of Yearly Meetings was for full information about the various pro-

1. See above. Section III, pp. 212-215.
 2. M.M.S. Vol. VII. p.188.

secutions in different courts. In part, this information was used to gain an adequate knowledge of the extent of sufferings, in order to have ammunition ready to throw at those in authority for a change in the law respecting tithe prosecutions. It was also most useful for the Meeting for Sufferings to obtain precise information about the technicalities of prosecution, so that the Meeting might first assimilate the complexities of the law and then give advice on the best means of defending a case. It was from this information that the Friends compiled the four volumes which make up the Book of Cases. These volumes, compiled from 1682 to 1850 (but mostly in the earlier period) contain a wealth of legal information which would be of great use in advising Friends who were prosecuted of the best means of defence. Included are clauses from relevant Acts of Parliament, specimen legal cases of particular interest, and cases in Quakers' favour which could on future occasions be cited with profit as precedents. As early as 1687, the Book of Cases included "Instructions and Directions for such of ye People called Quakers ... to prevent their being Excommunicated".⁽¹⁾ This information was later to be circulated to a large number of Friends through the medium of the Meeting for Sufferings⁽²⁾. The Book of Cases also included a most interesting legal argument of the 1690's which struck at one of the main roots of redress for tithe owners against Friends - the right of Equity Courts to issue writs of sequestration against them. Friends argued that the Equity Courts

1. Book of Cases (B.C.) Friends House. Vol. I. p.175-6.
 2. See below p.226-231.

showed no prescription for this action, and suggested to learned counsel whom they employed, that consequently such action was illegal. The Barons of the Exchequer were:

'enlarging their Jurisdictions beyond the plaine meaning of the Statutes. And each Court endeavouring to treat their Compts. with all possible Incouragements.'⁽¹⁾

Friends found themselves baulked in this promising line of attack, however, by the usual argument that writs of sequestration had been issued by custom and beyond memory and, not surprisingly, they were not able to obtain any court decision which backed up their argument.

They were often more successful in applying their legal knowledge to the task of releasing Friends from prison, because their prosecutors had not proceeded in due form of law to obtain the imprisonment. The Books of Cases contain numerous examples. When George Harris was imprisoned in Dorchester Gaol in 1706, for non-payment of tithes at the instigation of the Archdeacon of Dorset, he appealed to the Queen's Bench that his imprisonment was not legal because:

'ye Information of Certifficate from ye Official of the Archdeacon of Dorset was not such as the Act of Parliament of the 27 Hen 8 directs to be given to the Justices of the Peace to committ the said Harris, But that ye Warrant of Commitment ought to be applyed for to ye Party grieved.'⁽²⁾

He gave two other reasons which were over-ruled; but on this tech-

1. B.C.: Vol. I. pp.244-250.
2. ibid. Vol. II. 1706. p.170.

nicality the Court of Queen's Bench "with much adoe", as the writer wryly noted, ordered Harris's immediate release. It followed that if the Friends could obtain sufficient knowledge of the technicalities of tithe law, and the penalties for infringing it, they could obtain a speedy release for many of their brethren who would otherwise have served long terms in prison. This knowledge, through the ubiquitous Meeting for Sufferings, they rapidly acquired and recorded.

For the acquisition of local knowledge of prosecutions underway the Meeting relied on specially appointed County Correspondents who sent up relevant information about the prosecutions taking place in the area of their competence. Prompt and efficient notification was of the essence. The Essex Quarterly Meeting was reprimanded in 1713 for delaying the sending up of information about action taken against a local Friend, Samuel Parmenter. The Meeting briefed the Essex Correspondents to obtain Parmenter's release from gaol if they could; but they were also told to:

'write to the Quarterly Meeting that they be more carefull
for ye future to give timely Notice here of Prosecutions agst.
Friends, the above mentioned friend having lain soe long a
prisoner and this Meeting not Informed of it.'⁽¹⁾

Armed with prompt knowledge, the Meeting for Sufferings was often able to give expert legal advice to Friends normally out of the range of any but affluent laymen who could purchase the services of an expert attorney. Without access to expert guidance, the layman

1. M.M.S. Vol. XXI. 4.7 month. 1713. p.87.

would probably never know whether or not he had been wrongly proceeded against. Samuel Powell, a Gloucestershire Friend who was imprisoned in 1694 for non-payment of tithes was informed that his case would be taken up, and the County Correspondent wrote to the Meeting for Sufferings:

'It's supposed there be severall Erors in the Warrt. of his Commitmt. and yt. he might obtain his Liberty if pleaded at the Assizes there.'⁽¹⁾

The Meeting duly instructed the County Correspondents to:

'advise with Counsell in the said friends Case if they see meet for his Relief.'

Defendants could also on occasion be released if it could be proved that the tithe owner had claimed too much as his right, or if, when a legal decision in favour of the tithe owner were given, those empowered to execute it had exceeded their warrant. As in many other cases, the Meeting for Sufferings was able to draw on its experience of similar cases to advise James Stones, a Kent Friend imprisoned in 1691. Stones denied liability to the amount of tithe demanded. The Meeting instructed the Kent Correspondent:

'to know whether the Sequestrators have taken as much or more from ye said J.S. than the sequestration was granted for ...

The way to prevent him from making a further distress will be to move the Court by Councell ye beginning of next terme, that

1. M.M.S. Vol. IX. 24.6 month. 1694. p.215.

ye Sequestrators may give a true Accot. of what they have taken and what's become of it, which hath been found an Effectuall Means to stop them in some other Friends Cases.'⁽¹⁾

Many legal problems of a similar nature were submitted to the Meeting for Sufferings, and the Meeting generally either advised the Friend, through the County Correspondents, the best course open to him, or, on a particularly difficult problem for which the Meeting had as yet no precedent, it would contact an attorney for his advice. Alternatively, the Meeting would make arrangements to search the legal records themselves. When a Worcestershire Friend was proceeded against in 1691 for non-payment of a steeple house rate, and arrested by a writ "De Excommunicato Capiendo", the Meeting, on hearing of the case, ordered:

'that a search may be made in the Crown Office to see whether she be Legally proceeded against.'⁽²⁾

If it were discovered that proceedings had been wrongly taken, especially if such proceedings resulted in imprisonment, then the wronged person could have redress. The activities of the Meeting for Sufferings and their delegates brought certain cases of wrongful prosecution to light; but the Meeting made it quite clear that they would not countenance any retaliatory legal proceedings. The wronged Friend should be satisfied with his liberty or an acquittal. When Thomas Hardcastle, who had been wrongly imprisoned in York Castle in 1692-3, asked the Meeting's advice as to whether he should prosecute the incumbent of his parish for false imprisonment, the Meeting

1. *ibid.* 16.11 month. 1690/1. Vol. VII. p.209.

2. *M.M.S.* Vol. VII. 17.5 month. 1691. p.260.

replied that:

'they are not for such prosecution,'⁽¹⁾

The unexpected legal competence of many Quakers could be a source of great annoyance to a litigious priest. The Cheshire County Correspondent related in 1691 that the Vicar of Wilmslow, "troubled in his mind" at the release from prison of Jeffery Alcock upon appeal to the Judge of the Assize, stated:

"If things go thus, Quakers being prosecuted in the Bps. Court and flung in prison, and forthwith Released by the Judges, All the small Tyth will be lost etc." And upon hearing of his discharge (he) talked of shutting up the Church Door (and) Spoake as if he would Preach no more.'⁽²⁾

A worse fate befell the Vicar of Blyth (Notts.) in 1694. He had had Joseph Sheprees imprisoned for non-payment of his tithe, although he could not see out the prosecution. Suitably awed, the County Correspondent asked the Meeting:

'Whether Joseph Sheprees ought not to be discharged seeing his Adversarye Priest Turner of Blyth is dead, being strangely struck in his Pulpit as he was preaching & being helped home Lived but a few days. Noate yt. a little before he was thus stricken, he Threatened severall other Friends he would proceed agst. them and send them to Prison for his Tythes.'⁽³⁾

In certain circumstances, the Meeting was willing to defray the

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1. *ibid.* Vol. VIII. 26.3 month. 1693. p.262.
 2. *M.M.S.* Vol. VII. 8.3 month. 1691. p.241.
 3. *ibid.* Vol. IX. 21.7 month. 1694. p.225.

expences of Friends, especially those whose cases were of special value as precedents. The case of William Mote and John Thompson in 1692 was of this description, and the minutes of the meeting noted:

'Saml. Waldenfield brot. to this Meeting ye Accot. of wht. he Expended in Trying the Case of Will. Mote and Jno. Thompson who were Excommunicated for not repairing the Steeplehouse being eight pounds eleven shillings and four pence. And Samuel Waldenfield being desired by this Meeting to take care therein, that soe their Tryall might be as a President for friends in Generall in ye like Case & ye whole Charge being about fourteen Pounds, the Friends of this Meeting did consent that the above sum of Eight Pounds Eleven Shillings and Fourpence should be repaid.'⁽¹⁾

Charges might also be defrayed if the Meeting considered that a Friend had had to bear a particularly heavy burden. John Tomkins, who was imprisoned in the Fleet in 1696-7, after previously being a prisoner in Carlisle Gaol, and kept a long distance from his family, had his charges paid "in consideration of his Great Sufferings"⁽²⁾.

From time to time, the Meeting issued general advice to Friends on how to proceed if legal steps were taken against them. In 1709, for example, a general advice went out, together with the usual demand for the fullest information to be passed back to the Meeting for consideration:

'It is proposed that where any friend is Subpoenad into the

1. *ibid.* Vol. VIII. 8.5 month. 1692. p.106.

2. M.M.S. 19.1 month. 1696/7. Vol. XI. p.173.

Exchq. upon accot. of Tythes, that he or some of his friends doe desire his prosecutor to give him an Account in writing how much his demands are for Tythes - and John Field is desired to deliver this minute to ye Yearly Meeting, that it may generally be taken notice of. (1)

In 1720, Friends brought before the Ecclesiastical Court were urged:

'Allways to appear, and demand a Copy of the Libel that No opportunity be lost for preventing their being run for an Excommunication. (2)

Useful as these directives were, possibly the most effective work done by the Meeting for Sufferings on behalf of Friends prosecuted for non-payment of tithe, was in the field of lobbying influential parties to secure either release or mitigation of sentence. Friends were not afraid of speaking with the Bishop of the Diocese if they suspected that he was sympathetic towards some of their grievance. When a Robert Southgate was prosecuted in Norfolk, a Quaker delegate, George Whitehead:

'spake with the Bp. of the Diocese in the matter who seemed to be concerned at the severe prosecution and sd. he would write to the Priest abot. it, and let G.W. know wt. he said therein. (3)

Heartened by this success, Whitehead immediately referred two other prosecutions to the Bishop of Norwich. (4)

1. *ibid.* Vol. XIX. 22.2 month. 1709. p.221.
2. *ibid.* Vol. XXIII. 22.2 month. 1720.
3. *M.M.S.* Vol. X. 24.11 month. 1695/6. p.144.
4. *ibid.* p.200.

The Meeting had tried one step higher in the case of Thomas Pollard, imprisoned in Canterbury Gaol in 1693. Pollard wrote to the Meeting, stating his belief that:

'The terem being over and hearing nothing from the Priest makes him conclude that the Priest will continue him in prison.'⁽¹⁾

The Meeting referred the matter to local delegates, William Mead and Theodore Eccleston, directing them to speak with the Archbishop to try to obtain Pollard's release. There was no immediate response, but a month or two later two other Kentish delegates reported back to the Meeting that they had tried a new line of attack in approaching the "Dean or Prebend of Canterbury's sister". Here they were on more fertile, if less orthodox, ground. The good lady:

'Acquainted them she had writt to her Brother and recd. his Answer That he was willing to forgive the friend the Tythes demanded Provided he would pay the Court Charges.'⁽²⁾

Three weeks later Pollard reported joyfully:

'That the priest hath let fall his prosecution against him and yt he is at present at liberty from prison.'⁽³⁾

The Meeting for Sufferings, therefore, provided legal expertise and a certain influence for the ordinary Quaker which was not available to many others. It was not, of course, universally successful. There were Friends who spent years in prison; and

1. *ibid.* Vol. VIII. 9.4 month. 1693. p.266
 2. *ibid.* Vol. IX. 14.5 month. 1693. p.7
 3. *M.M.S.* Vol. IX. 14.5 month. 1693. p.7

many others who could not escape the clutches of a greedy parson, or one who had a particular axe to grind. Punitive prosecution, though it declined greatly as the eighteenth century progressed, remained an occasional hazard, and thus a source of continuing, though lessening, grievance to Friends at large. A good example is found in the Parish of Holy Trinity, Coventry, in a tithe case which lasted from 1781 to 1789. In 1781 the Vicar of Holy Trinity, Joseph Rann, instituted suits in the Diocesan Court at Lichfield against seven local Quakers, five men named Ault, Freeth, Russeall, Eveleigh and Heath and two women, Ann Arch and Elizabeth Fowler⁽¹⁾. In each case the demand was for payment of 2d per year due from every householder, and those living with them who were over the age of sixteen. Originally, the claim had been from 1773 - when Rann was instituted into the vicarage - but the Friends' legal machinery was brought to bear, and a loophole was found that Rann had offered no proof that each of the defendants was over the age of sixteen in every year since 1773. An appeal to the Court of Arches in 1784 on this technicality resulted in a quashing of part of the suit, and Rann reduced his claim to 2d per year from 1781 only. Even the earlier suits fell within the limits of tithes cognizable by the Justices of the Peace, and these cases therefore were labelled by the Friends as "Persecution".

The defendants put in their answers to Rann's libel. None of them made any attempt to deny the law by which he claimed Easter Offerings.

1. L.J.R.O.: B/C/5: 1781, 1784 and 1785-6. The relevant documents are spread among the boxes for these years.

They each replied along the lines of Ann Arch who said she was:

'Fully persuaded in her Own Mind that such Claims or Demands are inconsistent with the Freedom of the Gospel of Christ whose command to his Disciples was "Freely ye have received, freely give". And therefore this Respondent cannot in Conscience pay them or any thing of this kind.'

Judgment was given in 1785. The defendants were ordered to pay 4d each as arrears of Easter Dues, together with costs of the suit.

The defendants' proctor argued that the costs should be made as low as possible, arguing that Rann had instituted the suit "animo malicioso", and that the whole matter could have been settled before the Justices. The proctor went on to argue that the main reason for the prosecution had been an election dispute:

'These unhappy Quakers gave their interest at an election in Coventry contrary to the Plaintiff's inclination (he being a very busy man in the Canvass) and it is certain that these Suits very soon succeeded the Election.'⁽¹⁾

Rann denied the charge of election rivalry and stated, with corroborating evidence, that he had applied to the Mayor of Coventry in 1780 for a decree against one of the defendants. When he refused to answer the charge, the Mayor and Corporation refused:

'further investigation of or decision upon the merits of the sd. Complaint.'⁽²⁾

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1. L.J.R.O.: B/C/5: 1781-8 (Add. series)
 2. L.J.R.O.: B/C/5: 1781-8 (Add. series): Deposition of Mr Farr 1785

The Chancellor of the Diocesan Court was not disposed to make any allowance for the Quakers. Rann had submitted a bill stating his total costs at £30. 9.11 against each defendant. This was taxed by the Court⁽¹⁾ at £26.10. 0 to be paid by Freeth and £24. 9. 0 by the other defendants - which was the usual amount. There was also the cost of the appeal to the Court of Arches to be considered. These amounted to £89. 5. 7; but the Meeting for Sufferings which had taken a keen interest in the case and thought it a useful one as a future precedent, agreed in September 1785 to meet the appeal costs⁽²⁾. None the less, Rann's demand of 4d from each defendant had, directly or indirectly, caused the Quakers to incur costs of over £220.

The Friends themselves were by no means the only ones to attack Rann's action. The Mayor and Corporation of Coventry had refused to be a party to the prosecution of Quakers for such small amounts, and there was also considerable local sympathy. For Rann himself there remained the problem of obtaining his dues and costs if the Friends remained obstinate. In August 1782 Rann received a long letter from a Friend, a Mr Jenner, urging him to drop the suits. Jenner argued that Rann was probably not entitled to the Easter Dues and that in any case the effort was not worthwhile. Much of the letter showing the difficulties and probable futility of embarking on the course Rann had started by his prosecutions deserves to be quoted:

1. See above Ch. IV p.126 for an explanation of this system.
 2. M.M.S.: Vol. XXXVII. 9.9 month. 1785. p.218.

'It is well worth your consideration what the extremity of the Law is in questions of this nature & how far you are likely to arrive at the end of your pursuit by enforcing that law; it is true that in case of an absolute refusal to submit to the Decree of the Court ... You may proceed to excommunicate the Defendant and at the expiration of a certain time obtain a Writ to imprison his body; but *doc l'affaire est finis*, You cannot go a step further, for You cannot get execution against their Goods, nor can you by any means get either the sum sued for or the costs you have been put to in suing for it; for as the poor Quaker would think of himself & be confirmed in that opinion by his Brethren that he was suffering for Conscience sake, You may be assured that rather than submit to what they call an illegal & irreligious demand of the church they would patiently submit to the Imprisonment rather than purchase their freedom by an acquiescence to its decrees; this they call steadiness and justifiable perseverance. You and many others may call it obstinacy, but to you the Name is of small import if the effect is the same; namely that you will not only lose what you contended for, but the expence of that contention; & all this is supposing they were to sit down under the first decree which is not probable as their business will be to protract, and after the Judgement at Litchfield there are yet two Appellants Courts to which they may bring you and after the Judgement of the last, after you have been at the expence and trouble of attending these Courts You will

be left in the situation above described; and this you will undoubtedly be subject to, tho' Your claim should be well founded.'⁽¹⁾

By 1785, however, Rann was in too far. The Friends refused to pay costs, and the machinery of the law was grinding slowly towards ex-communication when the whole matter was stopped by an outside agency. The defendant Joseph Freeth wrote to the Meeting for Sufferings on 29 May 1789 that:

'There was some time ago a subscription set on foot amongst other people (& we have good reason to believe that no one of our Society hath been any ways concerned in it) by which there was raised £60 which was offered to Buckeridge, J Rann's Proctor, who said he would not accept it but offered to take £90. His positive refusal and much threatening what he would do, much alarm'd the parson's agent, Wm. Elliott so that he & some others I believe used their endeavours to have increased the Subscription in Coventry in vain.'⁽²⁾

The impasse was broken by a further donation of £10 to the fund, subscribed by a local Anglican clergyman who wished to see the affair settled. The total of £70 was accepted and the sorry business concluded, Freeth remarking with satisfaction of the clergyman's subscription:

'I am credibly informed also that it is in their agreement

1. L.J.R.O.: B/C/5: 1781-8 (Add. series) Jenner to Rann 28 August 1782.
2. M.M.S.: Vol. XXXIII. 12.6 month. 1789. pp.160-2.

that J Rann shall never proceed in like manner again.'

The Vicar of Holy Trinity was unlikely to need much persuading.

It cannot be too strongly emphasised, however, that such cases were exceptional, especially by the 1780's. In most cases the Society of Friends did not need to brush with the law for their "faithful testimony" against tithes. It may be seen that the number of prosecutions declines both absolutely and relative to the declining number of Friends. Imprisonment became increasingly rare, although still an occasional irritant. In any case the faithful testimony did not mean all that the Yearly Meeting would like it to have meant. Some Friends paid meekly enough. Others contrived to have their payments made for them with no questions asked. More lived in areas where their tithe would be negligible and not worth collecting when even the most meagre resistance was set up. Many, it would appear, suffered the tithe owner to come onto their land and take what was required - an expedient which appears not to have been abused as much as might have been expected. On balance, community sanctions operated in favour of Friends, who seem to have been generally popular, at least when combating the demands of tithe owners. Even when prosecutions were underway there was a chance that the legal knowledge which the Meeting for Sufferings acquired would be too much for an unwary incumbent or impropriator. Even though they became widely used only later in the period, the Acts of 1696 made recourse to the cumbersome machinery of Ecclesiastical or Equity Courts less likely. The worst of the persecution was certainly over by 1730. Increasingly after this time, when clashes occurred it was more often

personality rather than principle that was at stake. A grasping parson, or an overtly self-righteous Friend who took at face value the pious exhortations of the epistles of the Yearly Meeting could bring trouble on himself. Increasingly, one feels a growing gap between the purity of principle of the central body and the reality of the situation at the local level. If the arguments against the payment of tithe remained constant throughout the period, the response to those arguments did not. For the majority, the techniques of evasion and compromise were well enough advanced to make collision unnecessary. Clergyman and Quaker were often perfectly happy to find a mutually acceptable "modus vivendi". Tithing obligations became for Friends, as for many other sections of the community, an irritation, breaking occasionally into a rash of anger over some particular occurrence, rather than a constant evil. Long before the end of the period under study the "Faithful Testimony" had become an outworn and irrelevant slogan rather than a crusading banner.

CHAPTER VII: The Anti-Tithe Campaign

I

Enough has been said about the workings of the tithe system to indicate that tithe was a most unpopular tax. Its unpopularity derived from many causes. To the tithe payer, it was uncertain in incidence. One field might be covered by a small modus, while the next was left open to tithing in kind at the whim of the tithe owner or to satisfy the zeal of a new incumbent. It was almost exclusively an agricultural impost, and this became increasingly a cause of concern with the development of industry and severe fluctuations in agricultural profitability early in the nineteenth century. Tithe was seen as an unfair burden on the agricultural interest. To the tithe owner, it was scarcely more attractive. It was becoming increasingly difficult to collect and many tithe owners calculated that it was probably better in the long run to accept less than their proper due rather than exacerbate the tensions inherent in tithe collection and run the risk of expensive litigation. On one level, therefore, tithe was unpopular precisely because it was inefficient. It was also clearly a differential tax, bearing much harder on one sector of the economy than another. By the end of the eighteenth century, very few people wished to see the tithe system remain as it was. Plans for a change brought with them so many complications, however, that their implementation had to wait both for a reformed Parliament and a much changed

economic climate. Meanwhile the pamphlets and articles proliferated.

As Professor Best states:

'Many more books and pamphlets must have been written about tithes than about any other of the conventionally distinguished departments of church affairs.'⁽¹⁾

Much of this writing was concentrated in the period after about 1770, when the twin challenges of tithe-free industrial expansion, and growth of interest in agricultural improvement brought the tithe system under its harshest scrutiny. Before this period, attacks had been very much more fundamentalist in nature, concentrating on the origins of tithe rather than its agricultural and economic consequences. The seminal influence on such writers had been John Selden, whose 'Historie of Tithes' published in 1618 had attempted to show that the scriptural foundations for tithe were decidedly shaky, and that tithe was no longer being put to the uses for which it had originally been intended⁽²⁾. T Ellwood, in 1720, defending the Quakers' scruples against paying tithe, seems to have relied heavily on Selden's work, though he further concluded that tithe payment should be entirely voluntary:

'It were greatly to be wished that our legislators ... would be pleased to determine the controversie by taking off the Laws and Penalties by which people are compelled to pay Tythes and leave them entirely free in this case to exercise

1. G F A Best: Temporal Pillars (1964) p. 465.
2. See above, chapter I pp. 1-4.

their liberality to their Ministers as God shall incline.'⁽¹⁾
 Defenders of the system found themselves forced to meet Selden or his disciples on their own biblical ground, and attempt to argue the validity of Old Testament precepts⁽²⁾. They were usually careful, however, to bring their arguments up to date by reminding their readers of the obligations due from all members of society to its state church. Such arguments were usually pointed at the dissenters, and particularly the Quakers. One anonymous writer argued in 1744:

'Religion, being thought necessary to the Good of Society, it is judged equally necessary that there should be a certain Number of Persons selected who are to employ their time ... wholly to the discharge of that function.'

This being the case, and the state having contracted to support this view, the dissenters were under the same obligation to support the state church, as were its own members.

'The Government never intended, by the Toleration, to discharge Dissenters from their Obligation to maintain the Established Church.'⁽³⁾

The connection between church and state was a most important one, and it is no coincidence that attempts to limit the powers of tithe owners and of ecclesiastical courts should have been introduced in

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1. T Ellwood: The Foundations of Tythes Shaken (1720) p.306 B.R.L. 467299.
 2. See for example C Leslie, Essay Concerning the Divine Right of Tythes, 1700. (B.R.L. 335442) which painstakingly traces payment of tithe forward from Abraham.
 3. Anon: An Appeal to the Common Sense Common Honesty and Common Piety of the Laity in Respect to the Payment of Tythe. Goldsmith's Library GL 1744.

a Parliament (1727-1734) which contained a large anti-clerical element. In a Parliament which contained the major crisis of the Excise Bill, Walpole had also to contend with attacks on the church establishment through the tithe question. Tithes were clearly an important conversation topic in the London coffee houses, those who wished to maintain ample clerical provision having to agree that the existing system was much in need of repair, no less than those whose main purpose seems to have been to consolidate and extend Coke's seventeenth century victories by weakening powers of the ecclesiastical courts. The first Earl of Egremont noted in his Diary in October 1730:

'That while tithes subsist, the clergy can never have the esteem of the laity, because obliged to wrangle continuously with their Parishioners for their dues.'⁽¹⁾

When Sir Gilbert Heathcote's Bill to prevent suits for tithes unclaimed over a long period of years was introduced, however, the defenders of the church establishment looked not for methods of improving the safe provision of clerical revenue, but for legal arguments to counteract the proposal. The first issue of the Gentleman's Magazine argued that the Bill would stand legal procedure on its head by requesting the person aggrieved to prove his right, rather than the landowner proving his exemption. This, it argued, was unreasonable for a new incumbent:

'who, coming a stranger to the Parish, may not know what has

1. Historical MSS. Commission: Egremont Diary, Vol. I. p. 108.

been done and may easily be defrauded.⁽¹⁾

Heathcote's Bill met the implacable opposition of Walpole and Henry Pelham, and in March 1731 the Bill was postponed to the end of the session, thus effectively killing it⁽²⁾. A measure which would have had Heathcote's approval had to wait for over a century to become law⁽³⁾.

The 1730's which encompassed also the famous Quaker tithe Bill saw the most serious agitation hitherto on the subject of tithes. Thereafter, and especially after the 1745 Jacobite rising had reminded many that Whig Church and Whig Government could still fall, and therefore should still stand, together, the tithe question receded as a matter of public debate until about 1770. Complaints about the tithe system, of course, continued but were restricted for the most part to attacking the ecclesiastical courts and the delays inherent in tithe litigation. It was rare indeed, for example, to find a protagonist who was prepared to argue that tithe was an obstacle to the improvement of waste lands⁽⁴⁾. After 1770, the debate swung rapidly towards a consideration of the economic effects of the tithe system. In doing so, the whole question was brought into a position of prominence which it was to occupy until the passing of the Tithe Commutation Act.

1. Gentleman's Magazine, Vol. I, 1731, pp. 110-111. See also Arnall: Remarks upon a Bill now Depending in Parliament ... GL 1731, which makes the same point.
2. House of Commons Journal, Vol. 21, p. 680. 19 March 1731.
3. The Act of 1834, 4 & 5 Wil. IV cap. 83 prohibited claims for tithes which had not been paid for over 60 years. See above, Chapter III p.78.
4. As Arnall did in his 'Remarks' in 1731.

II

Adam Smith voiced in scholarly fashion what many landowners and cultivators had long felt about tithe. It operated as a differential tax, bearing more heavily on certain types of land than on others.

As Smith said:

'The tythe, and every other land-tax of this kind, under the appearance of perfect equality, are very unequal taxes; a certain portion of the produce being, in different situations, equivalent to a very different part of the rent.'⁽¹⁾

On land which was naturally productive, the produce would easily recompense the capital outlay, even with the tithe paid in full. On poorer land, however, the capital outlay would be much heavier, the produce probably smaller, while the tithe still amounted to a tenth part of the total produce. Smith drew the obvious conclusion from the observations he noted:

'Upon the rest of rich lands, the tythe may sometimes be a tax of no more than one fifth part, or four shillings in the pound; whereas on that of poorer lands it may sometimes be a tax of one-half, or ten shillings in the pound.'⁽²⁾

Such a situation could hardly fail to militate against agricultural improvement. Tithe was listed by Smith as one of the "effectual bar(s)" in his chapter on the discouragement of agriculture⁽³⁾, and he gave as an example the holding back of the cultivation of madder

1. Adam Smith, Wealth of Nations, 1776 (Everyman ed.) Vol. II, p.318.
 2. Ibid. pp. 318-9.
 3. Ibid. Vol. I, p. 347.

until the passing of an Act regulating the maximum tithe which could be paid on madder crops, since when madder cultivation had grown to challenge the dominance of the United Provinces in the trade⁽¹⁾.

What Smith had argued in relatively sober terms using the skills of the political economist, others, with less regard for scholarly niceties, could explain, expand and frequently distort in more heady language. In his 'Political Arithmetic', published two years before Smith's work, Arthur Young had laid the foundations by stating that tithing in kind dampened all ideas of agricultural improvement⁽²⁾. He returned to the same theme in the first issue of the *Annals of Agriculture*:

'Tythes are so powerful an obstacle to all spirited husbandry that it can never arise under the extreme burthen of their being taken in kind ... It is beyond all the powers of calculation to conjecture what is the amount of annual loss sustained by the community in consequence of this most ill-judged system being continued in such effective force over the Kingdom.'⁽³⁾

Young was perhaps wise not to attempt quantification: but writers were prepared to back up Young's general point by providing specific instances. The *Farmers' Magazine* reported the case of a

1. The Act was passed in 1757. See above, Chapter III p. 77.
2. A Young: Political Arithmetic, 1774, p. 18.
3. Annals of Agriculture, Vol. I, 1784, p. 73.

Cumberland improver who spent lavishly on draining land covered by peat moss and then sowing oats on it. He apparently had plans to improve more land, but found that with tithe amounting to 10/- per acre on the improved land, the expense ate up the profit he would otherwise have made. Smith's differential tax seems to have been borne out in practice, and the Farmers' Magazine dolefully noted:

'Indeed, the greatest improvers in the country whether landlords or tenants seem to be persuaded that under existing circumstances such improvements is a losing trade; therefore they are laying down their lands in grass and allowing those that are unimproved to remain so.'⁽¹⁾

Not surprisingly the agricultural surveys commissioned by the Board of Agriculture found examples of the same tithe disincentives. John Middleton, reviewing the agriculture of Middlesex in 1798, gave the example of a proprietor who wished to establish hop cultivation on his land, but was unable to come to any agreement with the vicar of his parish. An exchequer case was begun which the vicar won, whereupon, the proprietor:

'grubbed up his hops, sowed grass seeds, and made a pasture of the land. Thus was a produce of thirty pounds an acre reduced to three.'⁽²⁾

Middleton concluded that the tithe system had put a stop to various

1. Farmers' Magazine, Vol. X, 1809, pp. 466-8.
2. J Middleton: A General View of the Agriculture of the County of Middlesex 1798 p. 59.

enterprises which were "expensive but promising". His opinion was backed up by William Pitt in Staffordshire who stated categorically, though unfortunately without exemplification:

'I have the most satisfactory proofs from the evidence of several respectable cultivators that the quantity of wheat sown is affected by the tithe system; they have assured me that they decline sowing wheat and choose to manage their land in a grazing system because they cannot bear the idea of paying the enormous rates that have been asked them by the titheman.'⁽¹⁾

It should be noted, however, that even among those working for the Board of Agriculture itself, opinion on this point was not unanimous. The Hertfordshire reviewer, for example, although accepting that tithing in kind caused improvements to slacken, noted that most titheowners in the county took very moderate compositions⁽²⁾. His Oxfordshire counterpart went still further. He doubted whether tithes "are such an obstacle to improvements as sometimes presented"⁽³⁾, casting doubt on the amount of choice which most farmers had. Few farmers, he argued, were able to opt for the improvement of one piece of land as against another because one piece was tithable and another not:

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1. W Pitt: A General View of the Agriculture of the County of Stafford, 2nd. ed. 1813, p. 34.
 2. D Walker: A General View of the Agriculture of the County of Hertfordshire, 1795, p. 24.
 3. R Davis: A General View of the Agriculture of the County of Oxford, 1794, p. 31.

'Cases of this sort, comparatively rare and few in number, are not the proper instances to argue upon.'

Arthur Young, in producing a second Report on Oxfordshire⁽¹⁾, surprisingly contented himself with reprinting Davis's views, and offering no opinion of his own on the matter.

At best, those who sought to indict the tithe system as a whole merely on the grounds of its hindrance to agricultural improvement obtain a verdict of 'Not Proven'. It is perfectly true that individual instances of extreme hardship could be cited, but no one made any serious attempt to suggest that these were in any way typical. As the agricultural surveys noted, tithes were increasingly being taken by moderate compositions rather than in kind, and the instances of extreme hardship almost invariably involved tithing in kind which was becoming increasingly a temporary expedient, often while the rights and wrongs of a particular case were thrashed out elsewhere. Certainly, the evidence from Staffordshire⁽²⁾ indicates that the techniques of prevarication and evasion were so far advanced that the great majority of tithe owners were by the beginning of the nineteenth century taking what they could get rather than dictating harsh terms which individual farmers could do nothing but accept. It should be remembered that to the agricultural improvers, especially at a time when agricultural profitability made the ploughing of even the least promising wastes a feasible proposition, the continued existence of waste

1. In 1813.

2. See above, Chapter II *passim*, especially pp. 41-44.

land was a standing affront. They were able to show without difficulty that the prospect of tithing in kind the produce so laboriously and expensively grown would impose a great burden on the resources of the improver. A farmer from South Wales asserted in 1789:

'I know that the tenth of a good crop is often the whole of, and sometimes more than the farmer's gain: therefore tithe in kind prevents the cultivation of thousands of acres to the great loss of the Community.'⁽¹⁾

It was easy to argue from this premise that the abolition of tithing in kind would prove the panacea, and bring the agricultural improvers to their promised land. As an "anonymous friend to improvement" exhorted his supporters in 1803 in almost Wesleyan style:

'Let us cut off these legal bars
Which crush the Culture of our fruitful Isle.
Were they removed, unbounded wealth would flow
Our wastes would then with varied produce smile
And England soon a second Eden prove.'⁽²⁾

Such sentiments could only be expressed at a time when it seemed a viable proposition to plough almost all wastes. These expansive words took no account of the artificial stimulus of a war-time economy when profits outran costs; and farmers generally were in no mood to consider whether such opportunities would exist indefinitely

1. Bath & West of England Society, Vol. V, 1790, pp. 442-3.
2. Farmers Magazine, Vol. IV, 1803, p. 61

or whether (as happened after 1815) costs would ever exceed profits, and force cultivators of high cost marginal land to abandon their speculative enterprise, and either adapt to pasture farming or permit the land to revert to waste. Considered in this wider perspective, the effect on tithes on agricultural improvement seems to be greatly overstated given the exceptional circumstances of the war years and mild fashion in which most tithes were collected. The improvers did, however, have one further buttress to their case. They could argue that eighteenth and early nineteenth century judges adhered to an insufficiently liberal interpretation of the famous statute of 1549, which exempted barren heath and waste ground from tithes for seven years after improvement⁽¹⁾. This statute was interpreted as meaning that the exemption only came into effect when land was barren of its own nature, i.e. after ploughing and sowing (whatever the expenditure involved to get it to that state) it would yield nothing without extraordinary manuring and fertilising. This construction meant that many improvers were denied the benefit of the Act, which they might at the outset have expected to receive⁽²⁾.

None the less, even in the areas where tithes were taken in kind, opinions varied considerably as to the effect of the system on agriculture. When John Cramp, from the Isle of Thanet where rectorial tithes were still taken in kind, gave evidence to the

1. 2 & 3 Edw. VI cap. 13. See above, Chapter III p. 73-75.

2. Ernle: English Farming Past & Present, 6th ed. 1961, p. 343.

Select Committee on Agricultural Distress in 1833, he was asked to state whether this method of collection affected the manner in which the soil on the island was cultivated. He replied:

'I think not. There are some farms ... where one person takes in one parish and another in another, and the farm is in both parishes. When the agreement has not been friendly on the one side, it may have occasioned some little diversion of Cultivation so as to take some little revenge on one party, but I think to a very small extent.'⁽¹⁾

Complaints to the Select Committee were budest from the farmers and land agents of Kent, where a peculiarly unfavourable combination of tithing in kind of various specialised crops - especially hops - existed. But even here, most witnesses were careful not to isolate tithe as a sole cause of the distress. Emphasis was given to a whole range of "present imposts" in which, as in the evidence of William Taylor of Gillingham, the continually rising poor rates were contributing just as much as tithes to keeping various farms untenanted.⁽²⁾

The really serious effects of tithe, therefore, seem to have been restricted to the rapidly declining areas of the country where tithing in kind was still practised, and they were by no means universal even here. A survey of the ⁿational picture would suggest that the effects of tithe ^{ca} ~~as~~ 'improvement' were seriously overstated by many agriculturalists keen to make out a strong case

1. Parliamentary Papers (H.C.) 1833, Vol. V, para. 5545.
 2. Ibid, para. 6936.

for a permanent change in tithe law. Over the country as a whole, the evidence suggests that the conclusion of Chambers and Mingay that tithes were "hardly a real bar to improvement"⁽¹⁾ is the correct one.

III

Having argued that in general the tithe system did not generally present an effective bar to improvement, it is perhaps instructive to look at one case in which the system did create genuine grievance and hardship. The broad generalisation should not totally obscure the individual instance which makes generalisation so awkward. Not surprisingly, the case involves hops which were notoriously expensive to grow, and which as a consequence, involved the tithe owner with a greater real profit, once the expenses of cultivation had been taken into account. In common with most other surrounding parishes in 1790, a high composition was paid in Farnham (Surrey) in lieu of tithe of hops. The composition had been fixed several years before at 20/- per acre. About this time, however, a new tithe farmer appeared on the scene. Henry Halsey had paid £16,000 to the Archdeacon of Surrey for a three lives lease on the Farnham tithes⁽²⁾. Naturally he wished to recoup as much from his investment as possible and, having surveyed the parish and having seen both that the hop plantations were the predominant cultivation and

1. J D Chambers & G E Mingay: The Agricultural Revolution, 1750-1880, (1966) p. 46.

2. House of Commons Journals, Vol. 48, 1793, p. 634.

that the composition had remained unchanged for a number of years while prices were rising, sent round a circular notice to all proprietors intimating that in future the composition rate for hop tithes would be raised to £3 per acre. Anyone who was unwilling to bear the sudden 200% increase on his tithe expenditure would have to submit to paying tithe in kind.

The hop planters hurriedly formed themselves into a committee to meet this challenge, but they were unable to plead any modus or other exemption which would have any chance in a court of law. Instead they determined to try to shame Halsey into lowering his demands by making their situation as well known throughout the country as possible. The natural organ for publication of tithe grievances in 1792 was Young's 'Annals of Agriculture', and accordingly the committee on 30 January sent up a doleful report which Young happily published⁽¹⁾. The hop planters painted their plight in colours which suggested not merely a local but a national catastrophe. Not only would the new impost drive at least a half of the hop planters of Farnham out of business and onto the swelling poor rates, but also government must look as a consequence

'to a diminution of your revenue, not only in the article of hops, but in the very productive objects connected with it.' Above all beer would cost more and taste worse. The blame for this would rest with:

'those laws respecting tythes which, in the hands of avaricious and tyrannical men, are the engines of the most grievous

1. Annals of Agriculture, Vol. 17, 1792, pp. 379-382.

exactions and cry aloud for renovation or repeal.'

Tithing hops in kind was out of the question:

'the nature of gathering hops being such that it would not only be a very great inconvenience but, from the difficulty of picking and setting them out ... as must be obvious to every hop planter, it would frequently be the loss of half in value to the planter, by the necessary mode of giving the tenth to the impropiator.'

The next step for the committee was an appeal to Parliament. It had not escaped notice that by the Acts of 1696 and 1757 the powers of tithe owners over flax, hemp and madder - crops deemed important to manufacture and industry - had been restricted to maximum demands of 5/- per acre⁽¹⁾. It was possible to argue a similar case for hops, and in their petition to Parliament the hop planters of Farnham argued it. Hops were stated to be 'productive of a large Yearly Revenue to Government' which in recent years had

'become an Article of Export, and are likely to continue so if the cultivation of them be not checked.'⁽²⁾

The petition, signed by 53 inhabitants of Farnham, ended by calling for similar treatment for hops as for flax, hemp and madder on the argument of close comparability.

On 1 March 1793 the petition was referred to a Committee of the House⁽³⁾, which called for evidence from those involved. The hop planters were able to make out a strong case. Henry Dyson argued

1. See above, Chapter III p. 77.

2. House of Commons Journals Vol. 47, 1792, pp. 519-20.

3. Ibid, pp. 380-2.

that hop plantations eased the poor rates by providing employment for labourers during eight months of the year. John Stevens provided convincing evidence that because of different soil fertility and availability of manures, Surrey hop growers' expenses exceeded those of Kent by as much as a third. Dyson and various others stated that they would grub up their plantations rather than pay tithe in kind, and Dyson himself recalled a recent incident in which a 400 acre field near Canterbury was grubbed up "in consequence of Tythes in kind having been demanded."⁽¹⁾

After the Committee's investigations, the House received a report favourable to the hop planters, and Mr William Finch and Lord William Russell were charged to prepare a Bill "for ascertaining the Composition to be paid for the Tythe of Hops"⁽²⁾. At this Henry Halsey, the Farnham tithe farmer, petitioned the House, saying that the projected Bill would be highly prejudicial not only to himself but also to the Archdeacon of Surrey⁽³⁾. Such an appeal evoked a powerful response from an important section of Parliament. The issue raised was one which tortured the unreformed Parliament in the half century before 1832 - property versus principle. There was, of course, a crucially important element which was prepared to argue that the only principle worth preserving was the defence of property - and this viewpoint was reinforced by the impact of the French Revolution after 1792. Thus when the Hop

1. Ibid, p. 613.

2. Ibid, p. 613.

3. Ibid, p. 634.

Bill was discussed on 7 June 1793 it produced a predictable response from the government. The Bill's supporters were to find that arguments in favour of the stimulus of a particular industry fell on less receptive ears than in 1696 or 1757. Sir John Scott⁽¹⁾, Attorney General, in a heated speech, called the Bill

'the most violent measure that had ever been attempted to be carried through Parliament'

while Sir John Bedford, Solicitor-General, stated that it

'militated against every principle on which rested the sacred and inviolable security of private property',⁽²⁾.

These were strange accusations when it is remembered that the Bill sought to do no more than the flax, hemp and madder Acts had done. But times had changed. Already the fear of Jacobinism was dictating policy, and the fear which delayed so many reforms for upwards of a generation would subdue agitation for reform on this small issue. Although a thin House passed a resolution calling for the Bill to be referred back to the Committee,⁽³⁾ the session was so nearly over that it was easy to kill the Bill there.

The Hop Bill dispute was a clear indication of the need for reform. Certainly hop planters had a special case, but the dispute did draw attention to the fact that at any time a tithe owner could revoke a composition favourable to the landowner or tenant and substitute one which could mean a return of himself in real terms far in excess of one-tenth of the produce. From the 1790's onwards

1. Later Lord Eldon, leader of the 'Ultra'-Tories.

2. Parliamentary Register, Commons. Vol. XXXV, 1793, pp. 632-3.

3. House of Commons Journals, Vol. 48, 1793, p. 874¹/₂

attention was increasingly drawn to such anomalies in tithe legislation. The strongest argument of all against the tithe system was that it could treat persons in similar situations growing the same crops, very differently, and often only because the personalities involved differed in their outlook on the problem. As has been seen, the trouble by no means emanated from one side only, but it could be solved only by the government acting as arbiter and imposing a settlement on the unwilling of both persuasions. The 1790's was no time for such decisive action.

IV

Although the tithe system aroused strong passions on all sides, in the greater part of the country these passions were relatively quietly channelled. Perhaps because tithes throughout the eighteenth century were having less and less direct influence on what was becoming a rural proletariat, there were very few tithe riots during the period under study. Tithe disputes were overwhelmingly property disputes, and the propertied did not riot. Instead they litigated, or threatened to litigate, because they could afford it. A significant exception to this fairly orderly activity concerning tithes was the South-West. Morgan Cove, himself vicar of the Cornwall parish of Sithney, noted that in the 1790's more meetings had been held in the South-West to discuss the possibilities of tithe

commutation than in any other part of the country⁽¹⁾. It is not difficult to understand why this should have been so. Firstly the economies of Devon and Cornwall were greatly dependent on fish, and the right to tithe of fish had been seriously questioned. The important statute of 1549 had limited the payment of fish tithe to places where it had been collected continuously for a period not less than forty years⁽²⁾. Thereafter, in most places fish tithing became a fairly unusual occurrence. In the South-West, however, the tradition remained, although attended with increasing bitterness. Secondly, fishing was an occupation which was practised by those well down the social scale, who depended entirely for their livelihood on their catches. By the eighteenth century, therefore, tithe remained a much more important factor in the lives of the poor in the South-West than it did elsewhere, where tithe payment became increasingly a matter of concern primarily for those who were land-owners or tenant-farmers. The poor were saddled only with very small payments, which often the tithe owner did not think it worth his while to collect, and easter offerings of a few pence. The third peculiarity of the South-West in this matter was the well-known tradition of violence and riot, especially in Cornwall where

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1. M Cove: An Essay on the Revenues of the Church of England 2nd. ed. 1797, pp. 288-9. This was Arthur Young's opinion also. See R Watson, Anecdotes Vol. II, 1818, p. 57. Lord John Russell, himself M.P. for South Devon, noted in 1834 that farmers in the county were more agitated about the tithe question than elsewhere, and were frequent petitioners to Parliament on the subject. Hansard, N.S. Vol. XXI, pp. 1038-1054.
 2. See above, Chapter I, p. 9.

the tanners had been useful tutors to the rest of the populace. It is not too much to say that riot and disturbance had become by the eighteenth century an authentic part of Cornish culture. Given these three preconditions, it is hardly surprising that the South-West should display much of the most hostile reaction to tithe collection at least at the popular level. There was a serious affray in the parish of Paul (Cornwall) in 1729 after William Gwavas, the rector, had obtained a judicial decision for tithe of fish from 119 inhabitants of the village. The Justices of the Peace in a "Humble Representation" to the Duke of Newcastle stated that since this decision the defendants

'have since frequently assembled themselves together in large Companies with Guns, Pistolls, Swords and other Armes and Declared that they would kill all that should attempt to serve them with any Process of Law.'⁽¹⁾

This threat was apparently partially carried out, for when in November 1729 six officers came to serve notice of a fisherman to pay what the court had decreed, they were set upon by a large group of fishermen, many of whom had been defendants in the tithe suit.

The magistrates reported that a gun was fired

'and three huzzas made, Crying Come on Boys, we'll kill them, and then about one hundred and upwards of the Defendants and others came up with Sticks, Clubs, Poles with Iron and Pikes and surrounded them, and being gott about a quarter of a mile

1. B.M. Add. MSS. 36138, f. 228.

out of Paul Parish and then (without any provocation given but by Exhortation of (by) the Officers to stand off for that they had good law to defend them as well as arms to what they came about) Immediately fell upon the said Officers wounding many of them and beating them in a violent manner, and to such a degree that Richard Marten, by many fractures in his skull died of the wounds he then received the Saturday after.'⁽¹⁾

The murder was not denied, although the fishermen themselves pleaded that they were provoked by the fact that the officers, in trying to quieten or frighten the crowd, had used the muskets they were carrying, and a haphazard shot hit a young boy in the arm⁽²⁾.

Murder as a result of a tithe dispute was very rare, but in the South-West riot, and threat of riot, remained common. Lt Col Elford reported to the Duke of Portland in 1800, that when Mr Arundel, the vicar of Lifton (Devon), came to the local inn to collect his tithe compositions a body of persons assembled outside the window carrying a red flag,

'Calling out "Liberty, Equality and No Tythes", declaring they would not pay a farthing - The leader then fired a Gun loaded with Slugs into the Window which fortunately injured no one, but broke glasses, Bowls etc.'⁽³⁾

Significantly, radical - even Jacobinical - slogans had entered

1. Ibid.

2. Ibid, f. 232.

3. P.R.O.: H.O. 42/49. Elford to Duke of Portland, received 22 April, 1800. I am indebted to Mr. M. J. Thomas of the University of Warwick, for this information.

into the anti-tithe campaign in the South-West.

A few years earlier, Major General Rooke had reported his fears to the Duke of Portland that if a certain Mr Blaithwaite attempted to gather some tithes which had never before been claimed from certain parishes near Bristol, then an "unlawful assembly" might develop⁽¹⁾. His fears on this occasion proved groundless, but the Home Office papers in the 1790's show clearly that those responsible for law and order in the South-West counted tithe disputes as a factor to be considered in stimulating "riotous assembly", which seems not to have been the case elsewhere. The same problem was still troubling local magistrates in the 1830's. A Mr Edmonds, addressing the newly formed 'National Union of the Working Class' in 1832, told the story of another frustrated attempt to tithe fish in the South-West. His tale was punctuated by loud cheers from the assembled company:

'About two years ago the fishermen of Penzance were pounced upon by the jackalls of the clergy who came to seize every tenth fish, but the women threw the fish at them and drove them off; they then produced pistols which some of the men took from them and threw into the sea. The next day these men were put into gaol, but the tinnors and fishermen assembled and told the magistrates that if they were not released they would pull the gaol down, and they were compelled to release them and the tenth fish was not claimed again. In commemoration

1. PRO.: H.D. 42/34. Rooke to the Duke of Portland, 15-17 March 1795.

of this, the fishermen of Penzance have painted over their ships a death's head and marrow-bones with the motto: "No tithes".⁽¹⁾

The opposition to the tithe system was not, therefore, exclusively confined to middle class pamphleteers and agriculturalists who saw tithes as an insuperable barrier to improvement. Only the exceptional circumstances of the South-West, however, saw to it that by the middle of the eighteenth century there was considerable protest in one area by those lower down the social scale.

Elsewhere there seems to be no inherited tradition of tithe rioting. Even the Swing Riots of 1830-1 do not furnish any examples of authentic labourers' protest against tithe. It is, of course, true, as Hobsbawm and Rudé have shown, that agitation against tithe formed a very significant part of the pattern of the Swing Riots⁽²⁾. What is equally clear from a study of the disturbances themselves is that the agricultural labourers were incited to attack their parson not because they had any particular grudge against him, but because they had been told that the only way farmers could afford

1. Reported in Poor Man's Guardian, 14 April 1832. Lord King brought to the attention of the Lords in April 1833 a further case of anti-fish tithe agitation in the South-West. The new rector of Porlock (Somerset) attempted to tithe herrings there apparently for the first time. This resulted in making, in King's words, "a little Ireland of the parish". The tithe proctor was burnt in effigy, and the rector himself, unable to enforce his demands, fled the parish. Hansard (New Series) Vol. XV, p. 1134.
2. E J Hobsbawm & G F E Rudé: Captain Swing, 1969, esp. Appendix III, pp. 312-358. They list no fewer than 67 disturbances concerning tithe between November 1830 and January 1831.

to pay higher wages was to force the tithe owner to reduce his tithes. In this they had a considerable degree of success. At Goudhurst (Kent) on 15 November 1830, the farmers told the labourers that they could expect increased wages only if they were able to "stop the tithes"⁽¹⁾. In Brede (Sussex) tithes were reduced from £715 to £400 per year, and in Robertsbridge the tithe owner was forced to reduce his tithes by 25%, the labourers telling him "that it should be done to enable the farmers to pay them higher wages"⁽²⁾. The curate of West Chillington (Sussex) openly charged the farmers in his parish:

'with instigating the people to assemble in order to intimidate and compel the clergy to reduce their tithes.'⁽³⁾

In East Anglia the evidence of collusion between farmers and labourers in order to deflect criticism and attack from themselves is even plainer. In Suffolk, Colonel Brotherton noted "collusion ... amounting almost to a case of conspiracy", and Lord Suffield agreed that the farmers

'have in some instances been supposed to incite and encourage the late outrageous proceedings, to have suggested the outcry against Tithes and Rents'.⁽⁴⁾

The pattern from the Swing Riots therefore appears clear. The

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1. M Dutt: The Agricultural Labourers' Revolt of 1830 in Kent, Surrey & Sussex, Unpublished PhD thesis, University of London 1966, p. 167. See also Hobsbawm and Rudé, op. cit. p. 107.
 2. M Dutt: op. cit. p. 196.
 3. Ibid, p. 224.
 4. Hobsbawm & Rudé, op. cit. p. 152.

labourers wanted higher wages, and the tithe-paying farmers attempted as far as possible to ensure that this rise was met by a commensurate or greater reduction in tithes. To this end in many instances they deliberately fostered anti-clericalism. Hence the tithe riots. They were not, however, genuine lower class protests against a social evil, which the fishermen in the South-West conceived tithe protest to be. They merely provided the farming interest with a convenient whipping boy for the labourers to concentrate on - to the benefit of their own property and their tithe bills. In the main, a study of the tithe system does not reveal militant lower-class anti-clericalism in the countryside. We still await a detailed study of the position of the established church in the village community at the beginning of the nineteenth century; but it seems clear that, whatever the extent of militant rural anti-clericalism, tithe was not generally the standard around which it gathered. We still require proof of Mr E P Thompson's provocative generalization that:

'It was for the tithe-consuming clergy that the especial hatred of the rural community was reserved.'⁽¹⁾

V

The agricultural interest's long sustained attack on the tithe system was not exhausted by its arguments about tithe militating

1. E P Thompson: The Making of the English Working Class, 1963, p. 233.

against improvement. There were also, for example, comparability arguments. Why should the agriculturalist pay a heavy tax on yield - increasing as farming efficiency brought bigger crops - when the new industrialists escaped without penalty? John Payne, arguing that the iron-master or the lawyer would think it unfair to give a tenth of all he produced, concluded that tithe was not so much a land tax as a tax

'upon capital and labour and no law can give one man a right to the produce of the labour of another without deserving the epithets of "odious and oppressive".'(1)

Thomas Thompson made the same point more succinctly:

'Is it equitable that, whenever I work for myself, I should be compelled to work for another person also?'(2)

Arthur Young was able to draw upon the evidence of his famous Travels to point unflattering comparisons of England with the Continent⁽³⁾, and the Farmers' Magazine in 1810 noted that the absence of tithe in Scotland since the middle of the seventeenth century had contributed towards the fact that public burdens did not hit Scottish tenants much harder than a 1d. in the pound rent⁽⁴⁾.

The obvious consequence of the operation of this tax, agriculturalists argued, was that it slowed down the rate of agricultural

1. Annals of Agriculture, Vol. XVII, 1792, pp. 178-189.
2. T Thompson: 'Tithes Indefensible', 3rd ed. York, 1796, p. 50.
3. Annals of Agriculture, Vol. XVI, 1791, pp. 278-83. Young reminded his readers that tithe was virtually abolished in France and Italy, and that nowhere in Europe was tithe collected on new objects of culture.
4. Farmers' Magazine, Vol. XI, 1810, p. 256.

investment. An 'Old Correspondent' to the Bath and West of England Agricultural Society Journal, for example, argued that when £8 or £10 were spent

'Liming, marling, sub-draining, fallowing and improving land ... taking one tenth of the crop before he is repaid his expenses will turn the balance of the account against him ... He had better lay out his money at interest or in some other way, and live in idleness (as thousands do) to the great injury of the publick'.⁽¹⁾

Lena Tadman, writing to the British Review, also showed that money was more easily earned in investment than in agriculture under the prevailing system:

'If a person of large property places £100 in the bank, he receives 5% per annum; but if a farmer lays out £100 in manure and puts that into the land, the parson immediately ... becomes joint owner with him, with this difference: and advantage to the parson, that he pays scarcely any taxes on it, has no trouble in bringing the produce to perfection, has only to take that produce when in perfection.'⁽²⁾

Political economy also added a further argument against tithes when David Ricardo produced his famous 'Principles of Political Economy'. In this work Ricardo sought to combat the arguments of Adam Smith that tithe was an unequal tax, dependent on the fertility of the ground, by arguing that in common with taxes on raw produce,

1. Bath & West of England Society, Vol. VIII, 1796, p. 293.
 2. Quoted in The Pamphleteer, Vol. XII, 1818, p. 503.

tithe were passed on by the farmer or the landlord to the consumer who paid for tithe in the form of higher prices. So far from tithe being basically an agricultural burden, therefore, it was an impost indirectly paid by everyone:

'I have endeavoured to shew that such taxes do not fall with unequal weight on the different classes of farmers or landlords, as they are both compensated by the rise of raw produce, and only contribute to the tax in proportion as they are consumers of raw produce.'⁽¹⁾

The implication of Ricardo's work was clear. Henceforward, he could hope what he called "this most oppressive and irritating tax"⁽²⁾ would be attacked not only by the agricultural interest but by all consumers. J R McCulloch, on this subject at least, a Ricardian, expanded the argument in a long article in the *Edinburgh Review* which must have been singularly tough meat for those used to the simpler language and precepts of the writers in the *Annals of Agriculture*⁽³⁾. He warned against the easy belief, however, that because tithe was ultimately paid by the consumer, its abolition would bring lower prices. If it were abolished, then the landlord would immediately raise his rent to the farmer. Because some land was held tithe free or covered by moduses, some landlords were making extra profit in the form of higher rents while the consumer

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1. D Ricardo: *Principles of Political Economy*. In (ed.) P Straffa: *Works of David Ricardo* (1951) Vol. I, p. 184.
 2. In a letter to J R McCulloch, 15 September 1820 (ed.) P Straffa: *op. cit.* Vol. VIII, p. 381.
 3. *Edinburgh Review*, Vol. XXXIV, 1820, pp. 61-79.

paid higher prices as if all the land were equally affected by the burden.

To get round such problems as these, McCulloch proposed a solution which would transfer the burden which resulted from rent increasing "proportionally to the gross produce of the soil" by making it increase "proportionally to the net produce of the stock employed in its cultivation". He argued that this could be done by establishing a poundage on rents to which estates previously tithe free should contribute an equal amount. In this way, the clergy would receive the benefit to which they were entitled and differentials which had provoked much of the criticism of the tithe system would be swept away. McCulloch submitted a draft of his article to Ricardo and told him that he was constrained in his analysis by a politic need to appear fair and dispassionate:

'I should like to have handled the clergy more roughly; but the circulation of the Review in England and their very great influence rendered a degree of "management" quite indispensable.'⁽¹⁾

Ricardo found McCulloch's exposition of the inequalities of the tithe system, but did point out an obvious drawback from his suggested solution, which had the virtue of internal consistency, but which was none the less gravely unjust given the market for tithe free land:

'Many tithe free farms are yearly brought to market, and an

1. McCulloch to Ricardo, 24 August 1820. In (ed.) P Straffa op. cit. Vol. VIII, pp. 222-3.

additional price is paid for them in consequence of the peculiar advantage they enjoy. It would surely be very unjust to subject such a proprietor to a tax after his paying a valuable contribution to be exempted from it.'⁽¹⁾

McCulloch's problem was a very real one. It was incumbent on every agriculturalist or political economist who wished to influence government, not merely to point out the injustices of the tithe system, but to suggest an alternative means of provision for tithe owners. Tithes were regarded as a form of property and property had at all costs to be safeguarded. Thus, the anti-tithe campaign contained almost as many alternative schemes for tithe commutation as it did denunciations of the existing system. Arthur Young sought to assuage clerical fears by stating that they were full of "groundless apprehensions that their interest would suffer" if alternative provision were to be made⁽²⁾. Lena Tadman, a farmer from Northfleet (Kent) before beginning an attack on the tithe system was most careful to swear his allegiance to the established church, and to protect its revenues:

'My opinion is, that unless we keep in view the support of religion, church and clergy, we shall do harm instead of good, by making any alteration in the tithe laws ... Our established church, religion and ministry must be liberally supported, or England herself must fall which God forbid.'⁽³⁾

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1. Ricardo to McCulloch, 15 September 1820, ibid, p. 381.
 2. Annals of Agriculture, Vol. I, 1784, p. 73.
 3. The Pamphleteer, Vol. XII, 1818, p. 497.

A proper and acceptable mode of alternative provision was of the utmost importance, and the various Agricultural Societies encouraged correspondents to submit plans. The Bath and West of England Society went so far as to establish a premium for the best essay received on the subject, in the hope that

'by agitating the subject, the attention of ingenious men, both in and out of Parliament, may be the more excited to attempt some possible improvement.'⁽¹⁾

The response was encouraging, and numerous essays and articles were published. It was clear that there were three possible solutions, always allowing for the fact that compulsory change would be sanctioned by Parliament. The enclosure movement furnished numerous examples of the first solution - commuting tithe for land. This was the solution recommended by John Bennett who won the Bath and West of England Society's Bedfordean Gold Medal in 1814 for his tithe essay. His objects in effecting commutation were the usual ones - increasing waste cultivation, which would enable a growing population to be fed, and the ending of the enmity often current between clergymen and their parishioners - and he saw the advantage of a land equivalent over other methods of commutation because clergymen could then lease their land thus granted for a term of years and live on the proceeds, while colleges holding tithes could obtain estates which their stewards would then manage. He assumed, therefore, that the land thus obtained would not usually

1. Bath & West of England Society, Vol. IV, 1788. Introduction pp. xvi-xvii.

be farmed directly by the beneficiaries. Above all, the consent of the bishop of the diocese would have to be obtained before any exchange could be affected. Not surprisingly, the exoneration of tithes under this procedure would closely follow the procedures adopted during enclosure⁽¹⁾.

There were, however, serious objections to extending the scheme adopted in many enclosures. There was a growing suspicion that the social structure of the parish would be undermined if a clergyman suddenly joined the ranks of the substantial landowners. There was, after all, no obligation on a cleric to lease his lands, and as McCulloch noted with what must for him have been considerable restraint:

'It is extremely difficult to reconcile the two characters of a good farmer and a zealous and attentive clergyman'.⁽²⁾

The same point had not escaped many clerics themselves, who found it increasingly difficult to reconcile the pastoral ministrations of the parish priest with the squirearchical attitudes and cast of mind adopted by many clerics. The Bishop of Salisbury warned his clergy that

'The habits of life in which the clergy are educated, and the important office they fill are ill-suited to the occupation of a farmer'.⁽³⁾

It is probably true to say that the experience of enclosure militated

1. Printed in The Pamphleteer, Vol. VI, 1815, p. 284. On tithe and enclosure see below, Chapter VIII.
2. Edinburgh Review, Vol. XXXIV, 1820, pp. 61-79.
3. Quoted in Bath & West of England Society, Vol. IV, p. 111.

against giving land in lieu of tithes as a means of commutation, and this solution seems to have been less frequently advocated during the early years of the nineteenth century.

So too was the other simple method of selling tithes at so many years purchase for a cash sum, and exonerating them completely. Tithe owners were sufficiently on top of their business to realise that such a solution would be hopelessly unfair to them, especially in a period of great inflation. With these two avenues blocked, it is not surprising that attention focused increasingly on a method of commutation which certainly eliminated tithing in kind, but retained the tithe as a perpetual charge on estates previously burdened with it - the fluctuating money rent tied to the prevailing price of produce. As the price of corn was taken to be the most accurate barometer of prices generally, and as corn tithes were usually the most valuable, discussion quickly centred around a variable corn rent as a legitimate means of commuting tithes. Pryce's 'Essay on the most practicable method of fixing an equitable commutation for Tithes',⁽¹⁾ which won another prize from the Bath and West of England Society concluded that a composition varying with the value of money was the most acceptable solution, although he argued that there should be no compulsion on a tithe owner who was unwilling to alter his current arrangements. Pryce realised that the mechanics of commutation would be extremely complex, including the appointment of a surveyor, and tithe commissioners

1. Published in the Bath and West of England Society, Vol. IV, pp. 109-130.

chosen by landowning and tithe-owning interests. To ensure that the value of the tithe rent did not fluctuate too wildly, Pryce proposed the the value should be adjusted every tenth year, according to the average value of wheat prices over the preceding period. Thus the rent charge would reflect the general price trend, and not bear unusually heavily in a particularly bad year for the farming interest. Pryce had obviously taken enclosure proceedings as a model for much of his plan to effect tithe commutation, but he proposed that Quarter Sessions should regulate the arrangements for each particular award, as Parliament was too remote and uninterested in local arrangements. Quarter Sessions would be better placed to receive and act upon local knowledge.

Pryce's was only one of many plans for tithe commutation which argued along similar, though not exactly identical lines⁽¹⁾. All realised that commutation would be a lengthy, complex and possibly costly business if the value of tithes were to be translated into a fair and accurate corn rent, doing justice to both sides. The amount of justice done to the complexity of the task naturally varied from writer to writer, and was often reflected in the length of their work, but the climate of opinion by the 1820's had clearly swung towards a variable corn rent as the best means of effecting

1. It would be tedious to list many when the agricultural magazines gave so much space to similar plans, but see the Essay by Thomas Davis, steward to the Marquis of Bath in Bath & West of England Society, Vol. VIII, p. 239 et seq., and T Thompson, Tithes Indefensible, p. 135, for two of the best argued cases in defence of corn rents.

commutation. Parliament, of course, would have to determine which methods would leave both sides least aggrieved. As will be seen, it was a time consuming question⁽¹⁾.

William Pitt, in the period before 1792 when he seriously considered reform and made positive steps to implement it, was convinced that a variable corn rent was the most effective means of commutation. His own position on tithe was well known. He believed that tithe, as a "great obstacle to improvement", should be commuted. He also believed that commutation would be of benefit to the church, by removing much of the odium with which it was viewed in many quarters. His naturally cautious disposition, however, led him to believe that measures for commutation would be better introduced not by the government but from the episcopal bench. As he wrote in 1786:

'If, therefore, those who are at the head of the clergy will look at it soberly and dispassionately, they will see how incumbent it is upon them, in every point of view, to promote some temperate accommodation and even the appearance of concession which might be awkward in Government, could not be unbecoming if it originated with them.'⁽²⁾

Pitt put various enquiries in train over the next few years to obtain the most accurate information which he could concerning the feasibility of commutation and received papers and memoranda which

1. See below, Chapter IX.

2. Pitt to the Duke of Rutland, 7 November 1786. Quoted in Earl Stanhope: Life of William Pitt (1861) Vol. I pp. 318-9. The letter is also useful in indicating Pitt's attitude to the tithe question.

set out the difficulties and obstacles to be overcome⁽¹⁾. Lord Auckland in 1791 strongly urged positive action to establish a rent charge, which would be obtained by comparing wheat prices over a period of years. He urged immediate action:

'Perhaps there never was a moment more favourable than the present when the Sovereign, Ministers and the Bulk of the Nation are equally and jealously disposed to resist all Mischievous innovation and to maintain the rights of the Church of England and all essential parts of the Constitution: in a season less prosperous and still more in times of National Ferment and Trouble and Calamity, the same question, if not quieted at present, may be stir'd with great disadvantage and hazard.'⁽²⁾

Pitt, however, remained convinced that the initiative should come from the clergy, and wrote to the Archbishop of Canterbury in December 1791 suggesting that the church establishment should take the lead "in order that they may be enabled to give a proper direction to the business"⁽³⁾. Pitt did not, apparently, receive any encouraging response and in any case the course of the French Revolution determined that all reforming ideas should be shelved.

1. B.M.Add. MSS. 34440 f. 51-81. See in particular the Paper by Dr Sturges f. 58-63 which points out and attempts to resolve difficulties in the way of arriving at fair valuations - such as what happened when tithes had been slackly collected, thus giving an unusually low average from which to obtain a permanent rent charge. A new valuation, he argued, would be essential in all cases.
2. B.M. Add. MSS. 34440, f. 400.
3. Stanhope op. cit. Vol. II, p. 130.

Pitt, however, continued to look from time to time at various plans for tithe commutation submitted to him. For example, in 1799, he passed on to the Archbishop of Canterbury a plan to vest the income from tithe in the funds, from which the clergy would receive their income. This income would be adjusted to keep pace with the price of grain. Although acceptable to Bishop Watson of Llandaff, who usually found himself in a small minority on the episcopal bench, many other bishops voiced their disquiet and no measure was ever introduced into Parliament⁽¹⁾.

As far as the legislature was concerned the tithe question remained dormant until after 1815.

VI

If the niceties of tithe commutation together with the situation in France combined to forestall any attempts to legislate on the tithe question, neither constraint applied to the radical opponents of the system, for the radicals, naturally enough, wished to see tithe abolished rather than commuted. To the early nineteenth century radical, attacks on the tithe system formed parts of the pantechnicon of "Reform". Tithe was an integral part of Old Corruption and must be swept away along with rotten boroughs, tax eaters, the Corn Laws, Parson Malthus and the rest. The origin of tithe was attacked because it had no foundation in New Testament

1. R Watson: Anecdotes, 1818, Vol. II, pp. 56-58.

theology. As the Black Book, one of the most comprehensive critics of the church establishment, put it:

'Christianity contains less authority for tithe than Judaism. Jesus Christ ordained no such burden: and in no part of his history is any compulsory provision for the maintenance of the clergy mentioned.'⁽¹⁾

To this attack was added the further point that even if tithes had any authenticity they were no longer being put to their original use. The arguments concerning triple and quadruple divisions of tithe were brought out to suggest that tithe owners were entitled to receive no more than a third or a quarter of the total tithes collected⁽²⁾. The Black Book stated, though without convincing evidence:

'One thing, however, is certain as regards tithes, namely that in England, in France and probably in all Christian countries they were divided into four portions: one for the bishop, one for the poor, one for the repair of the Church and one for the Priest.'⁽³⁾

William Cobbett, in his numerous writings, attempted to point out the lessons to be learned from the history of the tithe system. He was particularly concerned to emphasize that tithe was not a form of property which could be taken over by the possessors of land, but

1. The Extraordinary Black Book, 1831, p. 9. This point was made over and over again. See, for example, the anonymous pamphlet: The Claims of the Clergy to Tithes and other Church Revenues Examined, 1830. See also above, Chapter I, pp. 2-7.
2. See above, Chapter I, pp. 3-4.
3. The Extraordinary Black Book, p. 11.

that it should be in part applied to the relief of the poor⁽¹⁾. It was, he argued, "public property", not "church property" and should be disposed of "as the Parliament shall please", for the public benefit⁽²⁾.

Cobbett was perhaps the most knowledgeable of the radical opponents of the tithe system. For many of the others tithe presented a useful stick to attack what the Church Examiner called "that huge, hideous and lubberly leviathan, the law church"⁽³⁾. The Black Book was concerned to attack clerical privilege and unequal division of church incomes generally, and tithe formed only a minor part of the attack which concentrated on sinecures and pluralities. Most radicals were outraged at the concept of a church protected by law and the state, contributions to which were compulsory on every farmer whatever his religion. Perhaps for these reasons the brunt of the attack was borne by the clergy, although at least one third of the tithes were in the hands of laymen and were, by general repute, collected in harsher fashion by men who regarded their collection merely as the consummation of a business transaction⁽⁴⁾. The satirists and cartoonists of the late eighteenth and early nineteenth centuries continually harped on

1. See his remarks on the Stipendiary Curate's Bill, 1805, in his Political Register, Vol. VII, 1805, pp. 789-790. See also his ideas on the origins and subsequent misappropriation of tithe in his influential work 'A History of the Protestant Reformation', above Chapter I, pp. 6-7.
2. Cobbett: Rural Rides (Everyman Ed.) 1853. Vol. I, p. 106.
3. The Church Examiner & Ecclesiastical Record, 16 June 1832.
4. See above, Chapter II, Section VI, pp. 59-61.

the theme of the fat, bloated and gouty parson stripping poor farmers of their best beasts with singular avarice and lack of sympathy or charity⁽¹⁾. Special attention was paid to the parson grasping his tithe pig, symbolising clerical gluttony. Thus Isaac Cruickshank's "Clerical Anticipation" (1797) has a fat parson with a face suggesting a surfeit of both strong food and drink, leaning over a pig-sty making his choice of the fattest specimen⁽²⁾, while another cartoon has a fat parson lying flat on his face in a pig-sty, whither he had entered to take a fatter animal than the one offered, while a large sow digs her teeth into the clerical rump. Numerous parishioners look on with evident amusement. The cartoon is entitled "Tythe in kind; or the Sow's Revenge"⁽³⁾.

By such works as these an indelible image of the clergy was presented which was sufficiently distorted to take on perfect and luminous reality for those who wished to believe it. Above all, they provided an easy target for town dwellers, unaware of the complexities of the tithe situation, to fasten onto when they sought to include the abolition of tithe as a plank in the platform of reform. On reading radical literature on the subject, it is clear that many writers were depending on second-hand information which could perhaps be expected in areas where tithe assessment and collection was not a matter either for concern or controversy. In

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1. The best published collection of these lampoons in M D George: Catalogue of Political and Personal Satires (1935). See also her commentary in English Political Caricature (2 vols) 1959, esp. Vol. II pp. 181-2.
 2. George, op. cit. Vol. VII, No. 9138.
 3. Ibid, Vol. VI, No. 6737.

most towns, tithe meant very little in terms of concrete grievance. None the less, the various Reform Societies whose activities were widely reported in the radical press, invariably supported motions calling for the abolition of tithes. The language used in such resolutions was frequently extreme, and seems to have been based on second-hand evidence. The following, from a meeting of the Ashton-under-Lyme Reform Society in January 1831, is a typical example calling for the abolition of tithes with the abolition of the Corn Laws, demands for wider parliamentary representation and a condemnation of the usurpations of the aristocracy:

'THAT the tithe system, or revenues of the church, as they are denominated, are unjust as they are tyrannic. They are unjust as they take from the useful and industrious part of society a tenth of the products and improvements of the land to support luxury and idleness. They are tyrannic as they are taken as a substitute for a public robbery committed by a tyrant King, who seized the lands and revenues appropriated for the support of the church and distributed them among an overgrown aristocracy.'⁽¹⁾

Certain radical newspapers, however, attempted to stimulate greater opposition to the tithe system than had previously been shown in

1. Printed in the Lancastrian radical and trades union journal 'Voice of the People' 29 January 1831. For similar examples see the resolution of the Leeds Radical Political Union in Poor Man's Guardian, 4 February 1832, and the Macclesfield Union of the Working Classes (P.M.G. 16 June 1832) which called for the appropriation of tithes for the "support of the superannuated, the blind, the lame and the unemployed as a compensation for their birthright".

England. Always, of course, they had the model of Ireland before them, where opposition from a Catholic majority to paying dues to alien clergymen and impropiators had resulted in refusals to pay⁽¹⁾, community sanctions and open violence which exercised the administration to a far greater extent than was ever the case in England. The Church Examiner bravely stated in August 1832:

'The anti-tithe feeling is certainly not confined to Ireland - it is nearly as strong in England, though at present less obvious. The RESISTANCE, however, is becoming epidemic.'⁽²⁾

This was clearly a case where the wish was father to the thought. Certainly, radical writers could point to certain "causes célèbres". There was, for example, the campaign in which Richard Oastler cut his radical teeth in combatting the new Vicar of Halifax's claim to grossly increased tithe compositions in 1827. Oastler's propagandist skills had seen to it that the whole of the West Riding knew of the clergyman's exorbitant demands and how stout hearted Englishmen had successfully resisted them⁽³⁾. Such adventures did not, however, take the same course as Irish anti-tithe struggles. The contrast between Ireland and England was stark. In Ireland a

1. The Irish situation forms no part of this study. For a useful recent survey see P O'Donoghue: *Causes of the Opposition to Tithes 1830-38* in Studia Hibernica Vol. V, 1965, pp. 7-28.
2. Church Examiner, 4 August 1832.
3. R Oastler: Vicarial Tithes, Halifax, 1827 was an important polemic in the struggle. The Leeds Mercury was also giving great prominence to the struggle in October and November 1827. The affair is lightly touched on in C Driver: Tory Radical: The Life of Richard Oastler 1946, pp. 33-35.

primitive agrarian, peasant economy dominated by Catholicism, in which the great majority of the population, poor equally with rich, was paying tithe to heretic priests and alien landlords. In England, an increasingly diversified economy, undergoing rapid industrialization, virtually without a peasantry, where the towns paid next to nothing and where in the countryside predominantly Anglican squire or tenant farmer paid tithes to Anglican parson, certainly grudgingly, but with no feeling that he was bolstering an alien regime. In England, tithe payment was a nuisance which was sometimes a real cause of discontent among a predominantly propertied section of society. In Ireland it formed part of a national disaster in which every Catholic was expected to share and to oppose. The differential response is hardly surprising.

None the less, the radical newspapers plugged away at trying to stimulate an 'Irish' situation. Hetherington exhorted his readers in March 1832:

'Need we cheer you up by the example of those who address you to a similar kind of opposition to TITHE PLUNDER which is equally unjust in this country as in Ireland? Need we exhort you to that resistance so earnestly recommended to you by your fellow sufferers who have already proved its success, not in the resistance of force or violence but of moral, powerful determination not to sanction its exertions by voluntary money payments or to countenance its legal recovery by the purchase of articles distrained for its enforcement! Do you too in like manner resist tithes and church rates and

thereby strengthen the struggle of poor Ireland.'⁽¹⁾

The response was slow, but each instance of communal opposition was rapturously received. In Glossop (Derbyshire) in August 1832 townspeople hindered the vicar's tithe collectors, and when their leaders were brought before two magistrates, they refused to commit them. The Church Examiner commented

'Thank God! We are at length beginning to see the fruit of our labours, and to the people of Derbyshire, where we know our work is extensively read, belongs the honour of first exhibiting public hostility to the odious tithe impost.'⁽²⁾

Derbyshire did not, however, rise in tithe revolt. Nor did the rest of England. Such opposition as there was remained isolated and sporadic, a subject of remark rather for its singularity than for showing a new trend in opposition to tithe payment. Thus, when John Pearson, a Rochdale weaver, was arrested in December 1833 for arrears of Easter Offerings, his property was distrained and auctioned to clear the debt, the only purchasers were the bailiffs themselves. The sale "did not last above ten minutes and the proceeds did not amount to ten shillings"⁽³⁾. In November 1835, an Oxford auctioneer refused to auction books distrained for non-payment of church rates, when he saw the large number of persons present who were voicing their opposition to such action⁽⁴⁾. Doubtless other examples could be found, but it is clear that such action on

1. Poor Man's Guardian 17 March 1832.
2. Church Examiner 4 August 1832.
3. The Man 22 December 1833.
4. Poor Man's Guardian 21 November 1835.

the Irish model was unusual in England, where the tithe system was attended with much less bitterness, and where, as has been seen, most tithe owners were prudent and moderate in what they claimed and what action they took when payment was denied. Although there were far more cases brought in 1833-4, before Lord Tenterden's Act limiting claims for tithe became operative⁽¹⁾, few reached the conclusion so eagerly sought for by Poor Man's Guardian and the Church Examiner.

The radical writers undoubtedly contributed to the feeling of antagonism against the established church in the 1820's and 1830's, and, as Professor Chadwick has pointed out, such anti-clerical literature was now reaching a much wider public. Wade's 'Extraordinary Black Book', for example, sold 50,000 copies between 1831 and 1835⁽²⁾. The stand of many, though by no means all, bishops against the Reform Bill had made the task of the radicals considerably easier, and there can be no doubt that church reform in the mid-1830's was at least partially stimulated by the fear of the 'Church in Danger'.

In such a situation, it was inevitable that the tithe question should by this time be regarded as one which had to be settled by the legislature, although it was always clear that the legislature would not be swayed by the root and branch arguments of the radicals. If there was to be reform of the tithe system it would clearly be

1. As noted in 'The Man', 29 September 1833, and Poor Man's Guardian, 7 September 1833. See below, Chapter IX.
2. O Chadwick: The Victorian Church Vol. I, 1966, p. 33.

by way of commutation rather than abolition. For much of the period when tithes came under continuous attack there were many who were prepared to argue that no change was necessary, but by the 1830's their numbers had dwindled. It is significant that when the Oxford Encyclopaedia, which had a strong clerical interest on the editorial board, published in 1833 an article on tithes it noted:

'It is of the utmost importance to parochial responsibility and even to religion that some just and reasonable standard of composition should be fixed.'⁽¹⁾

V

The upholders of the tithe system spent much time attacking what they believed to be the inaccuracies of its detractors. The clerical interest was especially severe on those who sought to project the image of the tithe-grasping clergy. It was pointed out again and again that examples of oppression by harsh collection of tithe ~~was~~^{were} much more likely to be the work of the lay impropiators than the clergy. It seems to be clear that on this point they were correct⁽²⁾. It was noted that the examples of clerical litigiousness had been seized upon and magnified while:

'the moderation of the many who have favoured their parishioners

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1. Oxford Encyclopaedia (1833 ed.) Vol. VI, p. 804.
 2. See above, Chapter II, pp. 59. It should be noted also, however, that impropiators were not always able to get all they wanted.

by an inadequate composition has either remained unknown or has been studiously suppressed.'⁽¹⁾

Morgan Cove extended this argument still further. With his sights evidently set on the *Annals of Agriculture*, he contended that tithes had been subjected to bitter and mostly inaccurate criticism:

'Every shaft which ingenuity wit or malice could devise hath been levelled against them insomuch that there is hardly an imaginary or real grievance with which this country is so pathetically said to be oppressed which hath not been attributed to the payment of tithes.'⁽²⁾

To many clerics this stricture must have appeared entirely fair. In their wilder moments radicals and improvers could even lay the burden of poor rates at the door of tithes by arguing that if the 'third' were 'properly' applied to the relief of the poor then the rates would be much lower, or even abolished. Moreover, the agricultural magazines did sometimes give the impression that only the tithe system lay between themselves and Utopia. In isolating the tithe system, they undoubtedly both over-simplified and over-stated their case. The conservatives were, however, themselves less than fair when they argued that tithes could not be a bar to improvement when agriculture was rapidly improving despite them, and when in any event they had always been paid, enabling tenants to calculate their likely outgoings before they decided on a plan

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1. Anon: Observations on a General Commutation of Tithes for Land or a Corn Rent, 1782. Goldsmith's Library.
 2. Cove, op. cit. p. 252.

of cultivation. As one observer put it in an attack on Young in 1791:

'Have not the value and produce of estates gone on improving in a wonderful degree, notwithstanding the odious and oppressive tax of tythes; notwithstanding this species of slavery under which you represent landlords as groaning? If we may judge from appearances, it does ^{not} seem as if it had operated materially to prevent improvements.'⁽¹⁾

Such criticism missed the central point that tithe was a differential tax and could in certain circumstances deter improvement. It could also be excessively punitive if a tenant, having customarily paid low compositions, expended capital on improvement only to find the tithe owner anxious to obtain his increase by substantially raising the composition, or demanding tithe in kind after the crops were grown. A not inconsiderable degree of agricultural criticism derived from the fact that under the existing system the farmer could never be exactly sure where he stood. Being uncertain in incidence, the tithe could operate both unfairly and without prior warning.

There were also those, though few in number, who were prepared to defend the institution of tithing in kind, as preserving a social order which conduced to the benefit of all classes. The personal

1. 'J.S.' in Annals of Agriculture, Vol. XVI, 1791, pp. 271-278. It is interesting to note that in an early edition of his Political Register Cobbett maintained that tithe was not an impediment to agriculture. See Vol. VI, 18 August 1804, pp.244-8.

contact which a clergyman obtained from his tithing tour enabled him to preserve his crucial position between high and low, ministering to each and reconciling the one to the other. W H Milman argued in 1833:

'The clergyman of a parish, constructed as the Church now is, stands in a position the most favourable that can be imagined for bracing the upper and lower orders of society together. He has usually the confidence of his people ... His domiciliary visits actually bring him into the closest possible acquaintance with the practical operation of the system upon which an estate is managed.'⁽¹⁾

Such a view was both idealistic and anachronistic and by 1833 most clergymen knew it. They rested the bulk of their defence - as did all tithe owners - on the question of property. Tithe was a separate piece of property, as much to be protected by the legislature as any building or piece of land. Lord John Russell, who was later to introduce the successful Tithe Commutation Bill in 1836, realised the principles upon which any such measure should be based in order to have any chance of success:

'The tythe is part of the gross produce which never belonged to the landowner, but was always the property of another person.'⁽²⁾

This being so, compulsory interference was a matter of grave con-

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1. Quarterly Review, Vol. XLIX 1833, pp. 198-211. See also the remarks of the anonymous defender of the established church in 1782. Chapter II, p. above.
 2. Edinburgh Review, Vol. XXVI, 1816, pp. 276-281.

sequence, and although Russell was able to quote precedents in the Act of 1549⁽¹⁾ and the Act for selling tithes in Scotland in 1633, there can be no doubt that the changed climate in British politics brought about by the aftermath of the French Revolution was a grave setback to any hopes of early compulsory commutation. On one level, it gave the conservative clergy just the opportunity they required to remind their countrymen of the historic link of church and state, each protecting the other. Even before the Revolution, Lewis Bagot, Bishop of Norwich, had reminded his clergy that the right to tithe:

'is a right so firmly established, so interwoven in the original texture of our constitution that the Rand of power cannot violate it without endangering the rights and liberties of the whole community.'⁽²⁾

After the Revolution the same message was hammered home again and again. It was 'No Bishop, No King' revived and refurbished to fit a new climate of opinion. Cove, as usual, had a word on the subject:

'I do not hesitate a moment to assert that if the Civil Constitution of this country should ever fatally suffer from internal foes, it would be preceded by an attack on our Ecclesiastical Establishment ... Our Church and State form but one system: whatever hurts the Church hurts the State: whatever weakens the credit of the Governors of the Church,

1. See above, Chapter III, p. 75.

2. L Bagot: Charge to the Clergy of Norwich by the Bishop 1784.
W.S.L. Visitation Charges, Eighteenth Century.

takes away from the Civil Power a part of its strength and shakes the whole constitution.'⁽¹⁾

When the ecclesiastical establishment was debated in Parliament, the same tone crept into government speeches. The Lord Chancellor, in a debate on the operation of Queen Anne's Bounty in July 1803, noted the "great outcry" against tithes but contended, as the Political Register reported:

'that no part of the ecclesiastical system as it now stood could be broke in upon without running the risk of utterly destroying every part of the clerical character ... Tithes were a favourite topic to hold out to alarm the populace and in all the seditious publications from the 1793 to 1796 it was selected and held forth as a fit means of degrading the government and putting the subjects out of humour with it.'⁽²⁾

The technique of guilt by association was also employed with reference to the situation in France. Once the sacred rights over property were violated the floodgates were opened, and reformers as well as conservatives would be swept away by the deluge. A 'lay titheholder' reminded readers of the Gentleman's Magazine in 1816 of the French precedent:

'And we must once more warn the landowners that when they venture directly or indirectly to attack the right to this species of property, they shaken every other. This was the

1. Cove, op. cit. pp. 19-22.

2. Cobbett: Political Register Vol. IV, 1803, col. 1105.

first great step in the French Revolution; and they know well enough what followed.'⁽¹⁾

Undoubtedly such criticism damaged and delayed the prospects for tithe reform. The reformers themselves bitterly noted the ripostes they received, but there was little that they could do in such a climate of opinion. They had clearly shown the need for reform, yet they could not dispel doubts about its consequences. A reformer pointed out the size of the problem in 1803:

'only show yourself serious in trying to reform the abuse [of tithes] and the whole body of the clergy is instantly on your top: the hue and cry is forthwith raised that you are going to undermine our well-poised Constitution as it is established in Church and State: and you are from that day marked down as a Jacobin and a Democrat. This is the reason why the measure has not been carried into effect.'⁽²⁾

The campaign had to be continued until the spectres of revolutionary Jacobinism were less haunting, and government was prepared to look rationally at alternative provision, as it looked at ways and means of easing the burden of poor rates. The difficulties of the agricultural interest after 1815 facilitated this process by making the government look afresh at the taxes and rates which burdened farmers. The agricultural depressions of 1815-6, 1821-23, and 1833-36 brought with them the usual crop of petitions to Parliament

1. Gentleman's Magazine, Vol. LXXXVI Pt. II, 1816, pp. 310-11.
 2. Farmers' Magazine, Vol. IV, 1803, pp. 141-147.

and the setting up of various Committees of Enquiry which considered tithe as one among many factors⁽¹⁾. The evidence presented pointed incontrovertibly to the need for reform of a system which properly belonged to an earlier age.

1. For petitions and parliamentary reaction, see below, Chapter IX.

CHAPTER VIII: Tithes and the Enclosure Movement

To those who wished to see either abolition or radical reform of the tithe system the parliamentary enclosure movement offered both solutions and precedents precisely at the time when the system was coming under severe and sustained attack. Solutions were forthcoming in those parishes which petitioned Parliament to pass Acts of Enclosure including provision for extinguishing tithe either by apportioning land in lieu of tithe or, rather more rarely, by substituting a fluctuating corn rent which could never revert to tithing in kind. Enclosures also provided precedents in the argument that what Parliament could enact piecemeal in thousands of Enclosure Acts it could repeat in more compact and comprehensive form in order to rid the country of the worst effects of the tithe system. The main motives for enclosure were, of course, the facilitation of agricultural improvement and the consequent increase in the value of land. The substantial landowner enclosed because, despite the expensive and often lengthy proceedings required, it paid - and paid handsomely when he could confidently anticipate leasing his land for two, three and even four times its pre-enclosure value⁽¹⁾. A subsidiary motive among many farmers, however, was the desire to be rid of the nuisance of

1. Contemporary estimates spanned these multiples and recent research has in general borne out their conclusions. See W E Tate: The Enclosure Movement (1967) p. 158-9, and J D Chambers & G E Mingay: The Agricultural Revolution 1750-1880 (1966) p. 84-5.

tithes, and for this privilege they too were willing to pay handsomely enough. Indeed, one of the strongest arguments in favour of the thesis that tithes were a considerable disincentive to agricultural improvement is that many farmers were prepared to pay far more than the tenth in land in order to be rid of the burden for ever. One observer was clearly exaggerating when he argued that "the hatred and aversion to this system is such that they, on almost every enclosure, insist upon a commutation of tithes as a preliminary step, a 'sine qua non'"⁽¹⁾; but it was true that tithes loomed sufficiently large in many farmers' calculations that there were frequently consultations at an early stage in enclosure proceedings aimed at discovering the tithe owner's view on the desirability of enclosure, and its effect on his particular interest.

Whether a tithe owner was prepared to come to an agreement about his tithes was, of course, entirely up to him. Tithe commutation at enclosure was entirely a voluntary matter and the tithe owner might calculate that his interests would be better served by keeping the enclosed land tithable. This would be particularly likely when common or waste land was to be brought under the plough for the first time. Many tithe owners would calculate that the expectation of corn tithes becoming perpetually payable would outweigh the advantages of taking a piece of land and having no claim on the improved produce. It was possible, also, that the

1. Anon. letter in Farmers' Magazine Vol. II 1801 p. 280.

proprietors and tenants of commons would be less convinced of the necessity of getting an agreement with the tithe owners. Certainly, the propagandists reflected accurately enough the concern of arable farmers with the demands of tithe owners. On land currently common or waste the value of the tithe would be less, and might not be demanded at all. It is instructive, therefore, to divide parliamentary enclosures in this period into those which enclosed common arable fields (together with some common and waste) and those enclosing common and waste exclusively. Most of the open field enclosures in this period were concentrated in the Midland counties of England, particularly Northamptonshire, Bedfordshire, Huntingdonshire, Rutland, Oxfordshire, Warwickshire and Worcestershire. Enclosures of commons and wastes predominated in counties which had experienced widespread earlier enclosure, dealing piecemeal with both arable and pasture lands, and also, as in Staffordshire, lands which had been densely afforested⁽¹⁾. In all, the first type of enclosure was about twice as common in this period as the second⁽²⁾. In Warwickshire between 1603 and 1845, 125 open field Acts were passed and only 25 exclusively for commons and waste. In Staffordshire the totals are 24 open field Acts and 68 for commons and waste. The contrast between the two contiguous

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1. H Thomas: *The Enclosure of Open Fields and Commons in Staffordshire in Staffordshire Historical Collections* 1931 pp. 61-99.
 2. Tate: *op. cit.* p. 184. The exact figures are open field arable enclosures 1603-1845: 2792, Commons and Wastes: 1393.

counties is further pointed by the arrangements made for tithe. 25% of the total acreage of Warwickshire was enclosed by 125 private Acts between 1760 and 1870. Only 2% was covered by Acts enclosing commons and waste. No fewer than 118 of the 125 Acts contained provision for the exoneration of tithe⁽¹⁾. In Staffordshire, 12½% of the total acreage was enclosed but 75% of the Acts concerned commons and wastes. Of 101 Awards confirmed only 25 contained provision for tithe⁽²⁾. Reference to two further open field enclosure counties reinforces the contrast. 43% of Oxfordshire was enclosed by Act at this time and all but 3% of this was open field enclosure. Of 47 enclosure Acts passed between 1777 and 1836, 37 exonerated tithe⁽³⁾. In Derbyshire three quarters of the 21% enclosed by Act concerned open field enclosure. Of 55 enclosure Acts passed between 1772 and 1832, 39 contained provision for exoneration of tithe⁽⁴⁾.

It is clear, therefore, that there was a direct correlation between open field enclosure and exoneration of tithe. It is perhaps worth noticing, however, that the prevailing practice of

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1. Calculations from figures in Appendix X of J M Martin: Warwickshire and the Parliamentary Enclosure Movement Unpublished PhD thesis University of Birmingham 1965.
 2. Calculations from Acts and Awards in S.R.O. The enclosure Awards are listed as Q/RDc. For further details, see below, Appendix VII.
 3. D M McClatchey: Oxfordshire Clergy 1777-1869 (1960) p. 104. See also E C K Gonner: Common Land and Inclosure (1966 ed.) pp. 279-281 for calculations of percentages of counties covered by enclosure.
 4. M R Austin: The Church of England in the County of Derbyshire, 1772-1832. Unpublished PhD thesis, University of London 1969 pp. 180-194.

the county seems to have had some effect also. In Staffordshire, although 25 enclosure Awards included open field arable, only 12 of them included provision for extinguishing tithe. In Derbyshire, 26 of the 31 enclosure Awards (84%) did so. In certain areas, notably Warwickshire, alternative arrangements for tithe were considered as almost automatic when enclosure was being discussed, with tithe owners as keen to obtain alternative provision for a property which many of them regarded as a great nuisance, as tithe payers were to avoid still heavier payments on their improved lands. In other areas - although not so many - the question of tithe commutation assumed an altogether lesser importance.

The most usual course with enclosures of common and waste was for no mention of tithe to be made in the Act, or for a clause to be inserted specifically preserving tithe rights. Thus, the Kings Bromley (Staffs) Act of 1799 stated that nothing was to prejudice the right of tithes⁽¹⁾, while the Codsall Act of 1820 noted that nothing was to diminish the rights of tithe owners⁽²⁾. Certain Acts, however, noted that tithes should not be payable for a period after the passing of the Act. The Colton Act of 1792 stated that rectorial tithes should not be collected for seven years while vicarial tithes should remain payable throughout⁽³⁾. The explanation for this difference was that rectorial tithes were predominantly

1. 39 Geo. III cap. 110.

2. 1 Geo. IV cap. 54.

3. 32 Geo. III cap. 51. The Act also stated that if land were to be sold during the period of grace, tithes should become immediately payable from it.

arable, and the greatest expenditure after enclosure was on arable land. By contrast, vicarial tithes would not be so greatly altered in value after enclosure. At Drayton-in-Hales on the Staffordshire-Shropshire border the enclosure Act in 1773 stated that the vicar was to have 6d. per acre for seven years after the passing of the Act, after which time tithe was to be payable normally. Such provisions, of course, preserved the spirit of the legislation of 1549⁽¹⁾ which was designed to aid improvers by removing from them the additional burden of tithe payments during the period of greatest expenditure on their estates. There were examples in which the old seven year period was reduced. At Bobbington, no great tithes were to be paid for 5 years⁽²⁾ and at Cheadle, the wastes were to be exempt for a similar period although tithe of wool and lamb was to remain payable⁽³⁾. As the individual Acts superseded the general provisions of the 1549 Statute⁽⁴⁾, the tithe owners in Bobbington and Cheadle may be said to have benefited from the shorter period of grace, although eighteenth century interpretations of what constituted barren land under the 1549 legislation were fairly strict.

Tithe owners were swift to claim their tithe as soon as the period of grace expired. John Bill was concerned that refusal to pay tithe by two parishioners, John Goldsworthy and James Bull,

1. See above, Chapter III p. 74-76.

2. 3 Geo. IV cap. 5 1822.

3. 49 Geo. III cap. 102. 1809.

4. This was generally accepted. See the Opinion of J & J Simpkison, 29 July 1833: S.R.O.: D554/45.

would encourage others to default. He wrote to them in October 1831:

'I beg to state that as Lay Impropiator of the Great Tithes within Cotton & Farley I claim the great tithes of the new enclosed Lands in those townships. The seven years exemption from tithes given by the Inclosure Act commenced from the passing of the Act viz on the 28th. of May 1824 & consequently expired on the 28th. of May last ...

As I and my family & predecessors have been in actual receipt of the great tithes of Cotton and Farley in the Character of Lay Impropiator immemorially, I conceive that my claiming the great tithes ... was naturally to be expected as soon as the seven years exemption... was expired & it appears rather hard that my claiming them should become the occasion of subjecting me to an imputation upon my right as Lay Impropiator.'⁽¹⁾

Francis Elde tried three times, in 1722, 1726 and 1731, to get tithe of Broad Heath Common in Seighford as impropiator although before enclosure, the tithes of Broad Heath had been sold to the owners of the Grange. Elde had wished to claim tithe from that part of the common which had become part of the Grange as a result of enclosure and was now given over to productive arable farming. However, legal opinion reluctantly convinced Elde that the original sale of tithes also exonerated that part of the common now added to the estate⁽²⁾.

1. S.R.O.: D554/37
2. S.R.O.: D798/1/10/3

II

As has been said, tithe was extinguished at enclosure overwhelmingly by allotments of land. The precise amount was firstly a matter of negotiation between the parties concerned. The suggestion that tithe should be exonerated might come equally well from either side. It was common for the proprietors to write formally to the tithe owner indicating their desire to enclose, and asking him what terms he would consider. On occasion, they would venture to suggest at the outset what they considered appropriate. Thus at Ravensthorpe (Northants.) twelve leading proprietors drew up "Proposals for the Exemption from Tythes to be offered to the Tythe Owner". The chief clause was as follows:

'To give one fifth of the Arable Land and one ninth of the pasture Land in lieu of the Rectorial and Vicarial Tythe, but as there is a Modus in lieu of Tythe Hay it is proposed that the Commissioners shall have a power to make such a Deduction from the above Allowance as in their Judgment shall be proper ... The proportion to the Vicar for his Tythes to be settled between the Impropiator and Vicar themselves or between them by the Commissioners.'⁽¹⁾

When the vicar referred this proposal to the patrons of the living, however, he found that they were by no means keen to accept the validity of the moduses claimed by the proprietors. Patrons of

1. Northamptonshire Record Office: D2778/6

livings were, of course, intimately concerned with enclosure arrangements and their advice was usually sought by vicars and rectors before negotiations with proprietors were completed. When the patron - as in the Ravensthorpe case - was a large Oxford college with many livings at its disposal, scrutiny of individual arrangements was likely to be both more expert and more keen. In April 1795 the Dean and Chapter of Christ Church informed the Ravensthorpe proprietors that the modus was unacceptable to them, leaving the decision about whether to take the case to law to the proprietors⁽¹⁾. Rather than face the expense that such a course of action would entail, the proprietors surrendered their modus rights and agreed that the enclosure commissioners should set out

'one ninth of the Grass Land claimed to be exempt from the payment of Tyth Hay by a Modus.'⁽²⁾

The College had won a significant victory, for the proprietors' desire for enclosure had overborne their defence of a modus - usually among the most jealously defended pieces of property.

There were, however, frequently occasions on which the two sides could not agree terms for extinguishing tithes. Very rarely, failure to agree on tithe commutation ended negotiations for the whole enclosure, and John Middleton gave an example of Pinner Commons, which could have been enclosed early in the 1790's had not the rector made what the proprietors considered exorbitant demands

1. N.R.O.: D2778/9

2. Letter of James Morrell 16 May 1795. N.R.O.: D2778/16

for tithe⁽¹⁾; but such instances were exceptional. Normally, exoneration of tithe was for the proprietors a very real secondary benefit accruing from enclosure but hardly a real reason for it. When agreement could not be reached enclosure usually proceeded normally and the Act and Award would make no reference to tithe, unless to state that normal payments would continue. When Rev W Bayliffe, rector of Blore (Staffs) was notified that the proprietors of Swinscoe in his parish intended to seek an enclosure he set out clearly and in precise detail his tithe demands:

'The terms which I have to propose as a Commutation for the Tithes are these: one eighth of the Commons before any allotment is made to the Lord of the Manor: one ninth of the Old Inclosures: Land to be laid out upon the Commons of the value of the Moduses: The value of the Cow Gates to be laid out in land. All allottments (sic) to the Rector to be Ring Fenced at the Expencc of the Proprietors with walls two feet and a half wide in the bottom Five feet eight inches high with sufficient through stones and also with good Oak Gates where necessary, properly lying on stone posts. I am induced at present to observe that from the terms I have given in above,

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1. J Middleton: A General View of the Agriculture of the County of Middlesex 1794. p. 60-61. Contrast the dispute over tithes at Fordington (Dorset) where it had originally been intended to extinguish tithe payments. When agreement could not be reached with the impropiator, William Morton Pitt, enclosure went ahead and the 1811 Act made no reference to tithe. See G B Endacott: The Progress of Enclosures in Dorset unpubl. B Litt thesis, University of Oxford 1938 pp. 42-43.

I shall on no consideration whatever make any abatement since they are considered by the most competent Judges as perfectly fair, just and equitable.'⁽¹⁾

This was not, however, the opinion of the proprietors, who refused Bayliffe's terms. Despite his moderating them to one tenth of the commons, no agreement could be reached and neither the enclosure Act of 1802 nor the Award, which was not completed until 1815, made any reference to tithe.

It should be noted that not the least of the tithe owner's benefits at enclosure came from his having his allotments fenced for him⁽²⁾. Nor was he liable to any of the other expenses attendant on enclosure. Bayliffe was, therefore, only being more precise than most in his careful estimate of how enclosure was to be effected on his lands. Such a concession could be worth many hundreds of pounds to the tithe owner with enclosure costs running at £1.10.0 to £3 per acre or even more by the end of the eighteenth century⁽³⁾. The tithe owners' expenses were shared out among the remaining proprietors according to the extent of their holdings.

A further concession which tithe owners could insist upon and which could be especially valuable if the tithe was to be extinguish-

1. S.R.O.: D1851/3/5/1-2

2. This was an almost invariable practice. Only one contrary example has been found. The Ashwood Hay & Wall Heath Enclosure Award 1777 (S.R.O.: Q/RDc 40) noted that the Rector's tithe allotments of 156 3/4 acres should be fenced and maintained at his own expense.

3. Gonner op. cit. p. 201. See J M Martin: The Cost of Parliamentary Enclosure in Warwickshire, University of Birmingham

ed was the right to nominate a separate enclosure commissioner. If three enclosure commissioners worked on an enclosure the other two would be nominated respectively by the Lord of the Manor and the proprietors. A useful way of reducing steadily mounting enclosure costs was to make do with one or two commissioners, and it is noticeable that in many enclosures not affecting tithe only one commissioner operates. When Bayliffe at Swinscoe believed that tithe was to be extinguished, however, he was quick to defend his right to nominate a commissioner:

'Tho' it is far from the wish either of Mr. Shore or myself to subject the Proprietors to any unnecessary expence, yet after a full and mature consideration of the case we conceive it would be highly improper to accede to the proposal of only one commissioner, as not only the future general interests of the living but what more immediately concerns my own Interests from the consequences of the proposed Exchange are to be considered as now finally depending, we think it necessary to say decidedly that Two Commissioners must be appointed.'⁽¹⁾

When the enclosure proceeded without tithe extinguishment, however,

Historical Journal Vol. IX 1964 pp. 146-56 for evidence of mounting costs in the 1790's. See also W E Tate: The Cost of Parliamentary Enclosure in England, Econ. H.R. 2nd. series Vol. 5 1952/3 pp. 258-65. The Staffordshire evidence seems to bear out the conclusions of rising costs. The published costs of enclosing Needwood Forest (9603 acres) amounted to £33,390. (S.R.O. Q/RDc 58). The actual costs would have been even higher.

1. S.R.O.: D1851/3/5/1-2.

Bayliffe readily withdrew his request, and only one commissioner officiated.

III

It may at first sight appear surprising that, so consistently when tithe was extinguished at enclosure, allotments of land greatly in excess of the theoretical tenth were given to tithe owners. There were two reasons why this should be so. Firstly the tithe was a tax of one tenth of the gross, not the net, produce - a point of which agricultural improvers had long been aware. As Thomas Thompson put it, though with some exaggeration:

'The land-owner, then, would not hesitate to give the tithe owner one tenth part of his arable land in order to purchase exemption from tithes, But the tithe owner will by no means accede to such a proposal, as he receives a crop from the tenth part of the land which, according to the usual mode of calculation, is worth three times the annual rent of the land; and therefore he receives three times as much from a tenth of the land as he would receive if that tenth of the land were his own.'⁽¹⁾

Henry Homer, a well known enclosure commissioner in Warwickshire in the 1760's and 1770's, made the same point when he observed in his treatise on the work of enclosure that the value of the produce taken by the tithe owner "without taking any part of the Expense of its Cultivation":

'as in no instance to be rated at less than a fifth of the

1. T Thompson: Tithes Indefensible York 1796 pp. 46-47.

clear value of the Produce of such Lands, and in many cases at two sevenths.'⁽¹⁾

Secondly, Homer and other writers made it clear that the enclosure commissioners should take into account the likely improvement of the land after enclosure, and that the tithe owner should consequently be compensated according to the new value of the land. Certain Acts of enclosure even incorporated such an understanding into the directions given to the commissioners. The commissioners at Old Stratford in 1774 and Avon Dassett in 1779 were instructed to allot portions equivalent to the "new value" of the arable and pasture land.⁽²⁾ When John Sawyer, Lord of the Manor of Oddington (Oxon) in 1790 tried to persuade the rector to take the existing value of the tithes at enclosure, he received the following brusque reply from the President of Trinity College, Oxford, which owned the patronage of the living:

'Mr. Sawyer's proposal to leave it to the Commissioners to find a fair and just valuation on the Tythes on the Lands as now cultivated and to settle a Corn Rent according to that value is merely to convert the present Tythes into a Money Payment and to onerate the Rector with a part of the Expense of improving the Lands in the Parish without a possibility of bettering the Tythes, a proposal which it is needless to say neither the Patrons of the Living nor the Rector can

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1. H Homer: An Essay on the Nature and Method of Ascertaining the Specifick Shares of Proprietors upon the Inclosure of the Common Fields. 1766.
 2. 14 Geo. III cap. 31 and 19 Geo. III cap. 28.

accede to.⁽¹⁾

With such advantages, the tithe owner would expect to receive a sum in excess of the tenth irrespective of how difficult he had found tithe collection before enclosure. A study of the enclosure Acts which extinguished tithe shows that he was generally not disappointed.

The earlier Acts to about 1770 generally did not instruct the enclosure commissioners to distinguish between arable and pasture land and either instructed them to set aside a certain portion of the land, generally 1/7 or 1/8 or left the precise allotments to their discretion. Such discretionary allotments would, of course, follow the general pattern and principles of those Acts in which the commissioners' tasks were stated more explicitly. In such situations, however, it was particularly useful for tithe owners to have the right to nominate a commissioner of their own choosing. It was felt by many observers, including Henry Homer, that a straightforward seventh or eighth was too blunt an instrument to shape an equitable settlement for both sides. It took no account, for example, of how much land was arable and how much pasture. Homer argued that giving a seventh in some parishes would have the effect of doubling the tithe while in others it would make no financial difference at all. It is noticeable that after 1770 rather more sophisticated directions were given in the various Acts,

1. Quoted in McClatchey: op. cit. p. 105.

and also that the allotments of land tend to get rather larger. In Warwickshire, a typical open field enclosure county, allotting one fifth of the arable land became the most usual practice. At Coleshill in 1779, for example, the enclosure commissioners were directed to set out one fifth of the arable land, one eighth of the ancient enclosures and one ninth of all meadow and grassland⁽¹⁾. In all, 19 Warwickshire enclosures between 1774 and 1830 gave one fifth of the arable to the tithe owner and one - Grafton in 1812 - gave two ninths, the largest allotment in the county. The largest allotment in England during this period appears to have been the three-tenths of the land given in Shipton (Hants) in 1792 in lieu of rectorial tithes only. The tendency to give larger allotments in lieu of arable tithes would appear to indicate an increasing willingness of farmers and landowners to get rid of tithes at a time when agricultural profits were rising under the artificial stimulus of a war-time economy. Even after giving one fifth - or even more - of the arable land, landowners evidently felt that they would be able to make large enough profits to offset this initial loss. It is significant that of the 20 Warwickshire examples noted above, 18 date from the years 1790-1811.

Tithe owners in this period were also able to define precisely what was arable and what pasture to their own advantage. In many parishes there was land which had been farmed differently over the years preceding enclosure - sometimes arable, sometimes pasture.

1. A complete list of enclosure Acts to 1830 is given in Parl. Papers (H.C.) 1836 Vol. XLIV. The entries are made by county.

There was potential for dispute here when the enclosure commissioners came to apportion the land to the tithe owner. To prevent such problems, in two Warwickshire parishes both sides came to an agreement which was incorporated in the Act. At Cropredy in 1797 the commissioners were to include as arable in their calculations any land which had been so farmed at any time during the previous twenty years, while at Leek Wootton in 1817 the limit was set at ten years. As in both places the difference between the arable and pasture allotments was the difference between $1/5$ and $1/9$, it seems reasonable to argue that proprietors were willing to pay a high price for enclosure.

In all, Warwickshire tithe owners received 25,538 acres in lieu of tithe, which represented 17.4% of the total land enclosed⁽¹⁾. By contrast, in Staffordshire, a county mainly of common and waste enclosure, only 4809 acres were allotted, representing 5.3% of the total land enclosed⁽²⁾. Allotments of $2/15$, $2/17$ or $2/19$ of the commons and wastes were much more common⁽³⁾ and the largest allotment was at Edingale in 1791 where $1/6$ of the tithable land in the open fields was given⁽⁴⁾. It is noticeable, however, that the land so given was more or less evenly divided between clerical and lay owners of tithe. In Warwickshire 47% of the allotments went to the clergy; in Staffordshire 50.67%.

As has been seen, the great majority of tithe extinguished at

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1. Martin: Thesis op. cit. Appendix X.
 2. See below, Appendix VII b.
 3. See Comberford & Wigginton 1770, Kinver & Compton Common 1773 and Dunsley & Haffcot 1779 in Appendix VII a.
 4. 31 Geo. III cap. 60.

enclosure was compensated by allotments of land. It should be noted also, however, that in a few awards variable corn rents were substituted. This was a method which commended itself to William Pitt in 1791 when he considered - not for the first time - introducing a Bill to commute tithes. He received learned papers from men who advised him on the equitability and desirability of a variable rent⁽¹⁾, and he commended a scheme to the attention of the Archbishop of Canterbury on the basis of a plan 'which was adopted in the instance of two or three parishes by separate Bills in the course of the last Session'⁽²⁾. In Warwickshire of the 99 enclosure Acts listed in the 1836 return to Parliament, only seven made provision for a Corn Rent and only three - Moreton Bagot, Little Packington and Edgbaston - made a corn rent the exclusive means of provision for tithe owners. At Moreton Bagot, where the Act was passed in 1806, the enclosure commissioners were to ascertain from the London Gazette the average price of wheat for the previous 14 years, and to award yearly money payments in accordance with prices. At Little Packington in 1818 and Edgbaston in 1821, arrangements were made for the payments to be reviewed every seven years so that they kept pace with the prevailing price of corn. It is interesting to notice that at Little Packington the proprietors were able to include a clause excluding consideration of the seven years during the previous twenty-one when prices were at their

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1. See the paper of Dr Sturges: B.M. Add. Mss. 34440 f. 58-63.
 2. Earl Stanhope: Life of William Pitt 1861 Vol. II. Letter from Pitt to Dr J Moore 16 December 1791. See above Chapter VII p.276.

highest. Evidently, proprietors realised that corn rents should be kept as far as possible relative to prevailing prices and saw no reason why they should provide the tithe owner with an average buoyed up by artificial war time prices. It is an agreement which bears the marks of a post-war fall in profits, and perhaps a more hard-headed assessment of the value of proprietors' and tithe owners' property.

The Corn Rent was seen by many observers as the fairest means of provision for the tithe owner and it became the most favoured provision when a permanent commutation of tithe was discussed. It was a device born of inflationary conditions and came too late to affect most men's thinking on enclosure. It is significant that five of the seven Warwickshire enclosure Acts containing provision for corn rents were passed after 1800 when many of the effects of inflation were being digested. The success of corn rents in those places where they were introduced was an important factor in determining the mode of provision eventually used when tithe was compulsorily commuted after 1836.

IV

There can be no doubt that the tithe owner did extremely well out of enclosure. In the first place, it was at his option whether or not tithe was extinguished at all. He would consider each offer carefully, and there were occasions when he would decide that he would be better to preserve his old rights intact. The Bill family

in Alton, for example, calculated that it would be in their interests as impropiators of the parish to permit the proprietors to give allotments of land in lieu of their tithe. The problem was especially acute in that there were old enclosures in the parish which the proprietors did not wish to change in any way. In 1813 a member of the Bill family noted:

'It was intended sometime ago to get an Act of Parlt. to inclose Alton, Farley & Cotton in wch. intended Act was specified that a certain portion of Land be set apart to the Vicar of Alton in lieu of tithes. Now if the same be done in respect of the lay impropiators of Farley & Cotton their property will be greatly injured for though they will certainly get each of them a quantity of land in lieu of tithes yet, as the owners will have a strong inducement to keep the remainder of the Common continually in tillage or mow land, being tithe free, they will do so, and throw all those lands wch. have hitherto paid tithes into pasture land to the great prejudice of the lay impropiators of Farley & Cotton.'⁽¹⁾

The enclosure proposals were postponed, but when discussions were resumed in 1824 the Bill family would still not hear of commuting tithes on the new enclosures only. John Bill wrote that the 'most obnoxious feature' of the proprietors' plans was that under them proprietors:

'wo'd to the utmost of their ability & from interested motives

1. S.R.O.: D554/29.

secure themselves from paying small Tithe at all, by causing their Wool & Lambs to be taken and dropt & their Turnips & Potatoes grown on the allotments freed from Tithe.'⁽¹⁾

On this occasion, enclosure proposals were completed; but no accommodation could be made on tithes, and the enclosure Act of 1824 stated only that no great tithes were to be paid from the new enclosures for seven years⁽²⁾.

In the Ravensthorpe enclosure referred to above, it is possible to calculate the extent of the anticipated increase in the tithe owners' income. Before enclosure, it was calculated that the value of the rectorial and vicarial tithe together came to about £108 for the 1418 acres. On giving $\frac{1}{5}$ of the arable and $\frac{1}{9}$ of the pasture, this would increase to an estimated £225.15.6, an immediate improvement of over 100% which the tithe owners would then expect significantly to add to by improvement of the soil⁽³⁾.

Only rarely did tithe owners in open field arable parishes in counties where there was much enclosure refuse to take land as a convenient means of improving their revenue. To many, an allotment of land, fenced at the other proprietors' expense, sufficiently large to make the tithe owner a substantial proprietor, was a much better bargain than a right to collect tithe over improving lands, however spectacular the increase might be. Tithe was a form of property that was grudgingly given and required either considerable

1. S.R.O.: D554/50 Letter of John Bill 31 January 1824.
 2. 5 Geo. IV cap. 10.
 3. N.R.O.: D2778/34.

expense to collect or was taken at less than face value by a monetary composition. In addition there was always the possibility that tithe claims might be resisted, with consequent likelihood of large expenditure while a satisfactory compromise was reached, or the law reached its ponderous conclusion. It is small wonder, therefore, that tithe owners opted for land and a secure tenure guaranteed by Act of Parliament. Dr Austin has argued in his recent study of Derbyshire clergy that those livings which had not received allotments of land in lieu of tithe rose slightly more in value compared with those where land was taken⁽¹⁾. In some newly enclosed parishes, of course, tithe owners immediately leased their holdings for periods of 14 or 21 years at a fixed rent, and so did not participate in the inflationary situation until the leases fell in. One should clearly beware of arguing that enclosure alone had a buoyant effect on clerical incomes; but it is surely true that the taking of land gave tithe owners a much more secure and prestigious property than they had previously possessed. Most would have been quite happy to take land, even in the knowledge that their income might not grow quite so fast. However, Dr Austin is only able to show a slight differential where the tithes were valuable⁽²⁾, and there is no reason to suppose that enclosure appeared any less attractive to tithe owners. Indeed, the taking of land at enclosure became more common as the enclosure movement

1. M R Austin: op. cit. p. 192.

2. In rectories, livings increased by 238% between 1772 and 1824 when land was accepted. In livings where it was not the average increase was 257%.

progressed. Fewer open field enclosed parishes left their tithes intact.

There can be no doubt that in the Midland counties the social position of many clergy was greatly improved by enclosure. Property was, of course, the key to social progress and influence, and enclosure gave it in ample measure to many who had previously owned only a small glebe around the parsonage. T W Allies emphasized the importance of this factor when he reflected:

'Reverence for my office they had none; consideration for me as a gentleman, and landlord, and occupant of a large glebe, they had.'⁽¹⁾

Professor Ward has shown that in counties of heavy enclosure, glebe sizes increased two or three times after enclosure, and in 69 Warwickshire parishes there was an average increase in glebe of some 316 acres⁽²⁾. He goes on to argue, quite reasonably, that the clergy's good fortune in this respect had a deleterious effect on their pastoral oversight. Indeed it would not be going too far to argue that in certain areas of the country - notably the Midlands - the enclosure movement did much to break down the old village community at least as regards the role of the country parson. Increasingly distanced from the majority of his flock and living often in larger and altogether more salubrious property⁽³⁾ the

1. Quoted in McClatchey: op. cit. p. 98.
2. W R Ward: The Tithe Question in England in the Early Nineteenth Century in Journal of Ecclesiastical History 1965 pp. 65-81.
3. The early nineteenth century witnesses extensive rebuilding of parsonages, of which diocesan record offices keep full records. See Ward op. cit. p. 73 and McClatchey op. cit. p. 22 for Oxfordshire examples.

country parson in many cases devoted himself to writing and to hunting, and perhaps accepting the duties of a local magistrate. He was, in short, developing into a country gentleman, leasing his large glebe (or farming it himself) and living in a more opulent style⁽¹⁾.

Too much must not be made of a single development. Enclosure obviously gave new opportunities to many clergymen; but there were other, still more potent, factors at work in breaking up the village community. Above all, it cannot be too strongly stressed that the full effects of enclosure as described above were only possible where large portions of land came into the hands of the clergy and changed their social position as a consequence. In the Midland counties such a change was common. Elsewhere, in the North-West and much of the South-East, for example, it was comparatively rare. None the less the movement as a whole did have important social consequences which should be noted especially at a time when it has become fashionable to minimize its social effects as opposed to its economic benefits. The cartoonists were quick to point out the contrast between the pastoral role of the clergyman and the constraints imposed on him by his social position⁽²⁾.

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1. S & B Webb: English Local Government Vol. I 1906 pp. 350-9 for a discussion of the emergence of the clerical magistrate in many English shires. See also above Chapter VII for radical attacks on the clergy. See G F A Best op. cit. pp. 67-69 for the farming cleric.
 2. See for example George Cruickshank's famous cartoon 'Preachee & Flogee too!' 1818 which argues the different roles adopted by the preacher on a Sunday and the law enforcement officer for the rest of the week: M D George: Catalogue of Political and Personal Satires, No. 13281.

The clerical magistrate was the figure singled out for perhaps the bitterest attack. Henry Brougham wrote of clerical magistracy in 1834:

'Nothing has a more direct tendency to excite hatred and contempt both towards the men and towards their sacred office. It is also certain that they have not generally shown such discretion, temperance and forbearance in exercising magisterial functions as might either have been expected or desired from men in their station.'⁽¹⁾

A new stridency is noticeable in attacks on the established church early in the nineteenth century and the enclosure movement played its part in this. One further point should be mentioned. The enclosure movement played its part in widening the infamous gap between the richer and poorer sections of the clergy. Naturally enough, it was the rectories in good farming country which benefited most in the form of large land allotments from enclosure. Vicarages were not so amply rewarded, because the tithes collected by vicars were generally of much less value. Perpetual curates usually had no tithe rights at all. As vicarial tithes were less onerous to farmers, they were usually less concerned about commuting them at enclosure, and it is not uncommon to find rectorial tithes commuted while vicarial tithes remain payable as before⁽²⁾. Thus, many vicars remained tithe collectors while their

1. Edinburgh Review Vol. LVIII 1834 p. 500

2. See the Warwicks. enclosures of Barford 1760, Aston 1802 and Over Whitacre 1819. Reference to the 1836 Return to Parliament will provide many other examples.

rectorial cousins were translated into substantial landlords. It did not escape the notice of the radicals also, that there were many bishops and deans who held lucrative rectorial tithe in plurality⁽¹⁾. Many an episcopal stipend was augmented by enclosure arrangements.

Thus, the enclosure movement played its part in swelling discontent against the established church and its sources of revenue. It should not be forgotten, however, that in most parishes where enclosure took place, the arrangements made were satisfactory to both sides - even if only after some hard bargaining. Landowners and tenant farmers wished to be rid of tithes and were often prepared to pay a high price for their freedom. If the reallootments of land meant that certain smaller owners were squeezed out by receiving smaller allotments than it was economically viable to farm (and the evidence is not wholly conclusive on this point) then this was part of the price⁽²⁾. The mechanics of approval for enclosure saw to it that the weight of property over-rode the wishes of the smaller farmers when there was any clash. Tithe

1. The Extraordinary Black Book 1831.

2. This complex subject requires much more detailed research before any definitive conclusions can be reached, and cannot form part of a general history of the tithe system. The reader is referred to the suggestive work of W G Hoskins: The Midland Peasant (1957) pp. 249-251, and V M Lavrovsky: Tithe Commutation as a factor in the Gradual Decrease of Landownership of the English Peasantry. Econ. H.R. 1st. ser. Vol. IV 1933. Only a large number of detailed local studies in different parts of the country will yield sufficient data from which worthwhile general conclusions can be made.

owners were treated as owners of substantial property, with their rights safeguarded as a consequence. In general, they did well out of enclosure whether or not they accepted allotments of land. They clearly shared in the general agricultural prosperity which accompanied the years of greatest enclosure activity.

The significance of the enclosure movement for the future was that it showed that the burden could be satisfactorily extinguished or commuted, and that it strengthened the hands of those who looked forward to a general commutation, by showing that property rights could be put on a different footing without endangering the constitution. If the particular arrangements made at most enclosures were not appropriate for a general commutation, then such details could be discussed and argued out. The general principle of legislative interference was seen to be valid and operative. Many practical difficulties remained, but a great obstacle in the path of reform had been removed.

CHAPTER IX: The Tithe Commutation Act and its Parliamentary Antecedents?

I

By the 1830's the battle for tithe reform had been virtually won. Men of all political persuasions were convinced of the need for change, and the reform of the franchise in 1832 seemed to open the way for reform in many spheres. In April 1834, an editorial in *The Times* - always a friend to the church establishment - asserted that

'All men of all parties express the most anxious desire to see the tithe question set at rest.'⁽¹⁾

The question was not "whether" but "how", and by the 1830's, also, experience and debate had narrowed down the possible choices. Few in the 1830's put forward the claims of a land settlement in lieu of tithes. There were too many complications and unpleasant side-effects to please those who opposed the idea of a clerical squirearchy, and enclosure Awards had shown what this could mean in practice. In addition, it was possible for the clergy themselves to dislike developments which hindered their pastoral oversight by giving them too many extraneous interests⁽²⁾. Price fluctuations had also taught tithe owners the dangers of accepting a once-for-all payment.

1. The Times, 17 April 1834.

2. See above, Chapter VII, p.272 . Archbishop Howley, in particular, was fond of exhorting men to note the parson "in the midst of his Parishioners, like an Angel of God with a message of grace to each individual, administering Commendation or Censure, rebuke or encouragement" ... Best op. cit. p. 165. Such individual oversight would inevitably be prejudiced by substantial landownership with its rather different responsibilities.

It was not surprising, therefore, that increasingly men's minds turned towards a fluctuating payment, properly assessed, as the best solution.

Serious attempts to deal with tithe at the national level had to wait until the 1830's. Although Pitt was prepared in the 1780's and even the 1790's to put forward general commutation proposals, a combination of episcopal hostility and the pressures of the Revolutionary Wars, held him back⁽¹⁾. This apart, proposals for alteration in tithe laws were rather chipping away at the citadel from the outside, than dismantling and rebuilding from within. Thus, two Bills in the 1780's aimed to restrict the punitive powers of the ecclesiastical courts. Bastard's Bill of 1786 was designed to abolish prosecutions in the ecclesiastical court for ante-nuptial fornication and also "to put a stop to all prosecutions for small tithes in the Ecclesiastical Court and in the Court of Exchequer, and put them on a footing more fit to be adopted"⁽²⁾. The original bill was, however, withdrawn⁽³⁾, and its successor concentrated only on ante-nuptial fornication in which form it received the royal assent in May 1787⁽⁴⁾. The opposition to tampering with the titheowner's freedom to prosecute defaulters as he wished was too strong. Earl Stanhope came up against the same opposition when he introduced a Bill in the Lords to compel litigants for tithe below a certain amount to sue before Justices of the Peace

1. See above, Chapter VII, p. 275-277.

2. Hansard's Parliamentary History Vol. 25, 1785-6, p. 1053.

3. H.C.Journals Vol. 41, 1786, pp. 739-40.

4. Ibid, Vol. 42, 1787, p. 790.

rather than take their case to exchequer or ecclesiastical court⁽¹⁾. He was able to bring as evidence of punitive litigation the case of the Quaker Joseph Rann of Coventry⁽²⁾, but the Lords negatived the Bill on its second reading in July 1789⁽³⁾.

From 1789, there was little legislative activity on tithe until after the Wars, although other bills gave members an opportunity to retail their favourite anecdotes on the inequality of the system. The Earl of Suffolk was able to voice his objections to the payment of tithe in kind during a debate on Sir William Scott's Clerical Residence Bill in 1803. A debate ensued on a subject not before the House⁽⁴⁾. With the exception of an abortive Bill to enable clergy to lease their tithes to the individual owners of land in 1801,⁽⁵⁾ however, there was no further parliamentary activity until the Act of 1813 which abolished the sentence of excommunication for non-appearance before an ecclesiastical court and raised the limit below which tithe claims could be made before Justices of the Peace⁽⁶⁾.

It was certainly the sharp fall in agricultural prices and profits which brought numerous petitions to the attention of the legislature between 1816 and 1818 many of which mentioned the burden of tithes as a main reason for their distress. As John C Curwen, Whig member for Cumberland and extensive landowner and practical farmer, said

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1. Parliamentary History Vol. 28, 1789-91, pp. 214-221.
 2. See above, Chapter VI p.233-238.
 3. H L Journals: Vol. 38, 1789, p. 488.
 4. Cobbett: Political Register, Vol. IV, 1803, pp. 1029-1033.
 5. Parliamentary Papers, Vol. I 180 pp. 79-82.
 6. 53 Geo. III cap 127. See above Chapter III, p. 78 and Chapter VI, p.220-221.

in introducing a debate in May 1816:

'Scarce one of the numerous petitions that have been presented, in consequence of our agricultural distress but place tithes as one of the most prominent grievances under which they labour.'⁽¹⁾

Petitions were particularly numerous from the counties of Devon and Essex, the freeholders and occupiers of Churstow (Devon)

'praying for such relief from the Tithe Laws as will enable them and their fellow countrymen to extend the cultivation of Land, and to effect such improvements in Agriculture in all its diversified branches as the insular situation of the Empire, its political relations, the vindication of the Christian Religion, and the state of the people at this time require.'⁽²⁾

Curwen was able to use the opportunity presented by the agricultural situation to launch an attack on tithe litigation. He was particularly alarmed that the exchequer court was deciding on facts without sending matters in dispute to a jury.

'The Trial by Jury is a great and fundamental bulwark of the Constitution: and I cannot withhold an expression of my astonishment that such an innovation on Magna Carta could have been so long tolerated.'

The exchequer, argued Curwen, was also demanding the evidence of a

1. Hansard, Vol. XXXIV, pp. 365-9.

2. H C Journals, Vol. 71, p. 338.

Deed to prove an ancient modus or composition, "deeming no usage, however continued, sufficient to supply the existence of such an instrument". As has been seen, practice in this particular varied⁽¹⁾, and it would not be true to say that the practice of the exchequer was such that defendants invariably had to produce evidence which was so ancient that it was unlikely to have survived. Curwen asked for information about the number of cases recently heard and still under consideration by the equity courts⁽²⁾. A further debate in May 1816 led to the setting up of a select committee to take the petitions into consideration and

'to report to the House if it be expedient to enable the Owners of Tithes and Occupiers of Tithable lands and others to substitute pecuniary payments for Tithes in kind during certain specified periods.'⁽³⁾

The debate itself followed a traditional pattern. Newman and Curwen were concerned to point out the disincentives to improved agriculture which tithe presented, but they were careful to affirm that they were advocating no lessening of tithe owners' revenue but a more equitable method of assessment and collection⁽⁴⁾. Sir William Scott and Castlereagh were concerned that the committee would merely collect evidence against the Church, or seem to be encouraging what Scott called a "bazaar" to receive all manner of ill-informed

1. See above, Chapter IV, p.130-146.

2. The return, published in 1817, showed that 122 causes had been determined between 1810 and 1817 and 123 more were still under consideration. Parliamentary Papers Vol. XVI, p. 59.

3. H C Journals Vol. 71, p. 391.

4. The debate is in Hansard, Vol. XXIV, 1816, pp. 685-704.

complaints against tithe. The Times, commenting on the debate, not surprisingly warned against invasions of clerical property at a time of general confusion. It ponderously argued that no attempt to lessen the rights of the church could be countenanced:

'Any scheme which tends to force the clergy to a sacrifice of their rights, and to drive them from the solid ground of lawful & immemorial possession to an eleemosynary dependence on the liberality of the state would be utterly inconsistent with the stability of the English Constitution.'⁽¹⁾

Behind such warnings could always be placed the ultimate horror of the plunder of the clergy in France after 1789, and The Times noted

'With this example before our eyes, we do not hesitate to say that no pretence of paying the clergy a mere stipend without reference to the extent and produce of the soil, ought to be listened to for a moment.'

The Times, of course, was concerned to warn against measures far more radical than those yet presented to Parliament. The advocates of change went out of their way to profess their devotion to the established church, and the select committee's recommendations, made public in June 1816, were extremely mild. They recommended that a general form of lease should be framed to enable a standard procedure to be established⁽²⁾.

Accordingly, in the next session a Bill was introduced which

1. The Times: 23 May 1816.

2. Parliamentary Papers, 1816, Vol. IV, pp. 511-2.

proceeded slowly through the Commons⁽¹⁾. The novel principle in this Bill was that the leases, which could only be made after obtaining the consent of the bishop, would bind successors to a living, thus avoiding the frequent phenomenon of a new incumbent refusing to accept the tithe arrangements of his predecessors. Not unnaturally, Scott objected that such an arrangement:

'seemed to strike at a great principle of law, that a tenant for life should not injure his successor.'⁽²⁾

He also produced a letter from some of his Oxford University constituents which stated that the Bill was objectionable "in principle and professions". The Bill was delayed almost until the end of the session before being sent up to the Lords at the end of June 1817. It did not return.

1817 saw the introduction of a further, potentially more radical, Bill by Curwen. It followed up his researches in the previous session, by enabling any plaintiff or defendant in a tithe suit to demand a trial by jury, and to sue a composition before 1570 without producing the original deed or agreement. Instead, the main test of the validity of a modus should be the experience of living memory⁽³⁾. The Bill was introduced only at the end of the session, Curwen wishing to air it before introducing it for proper debate in the following session. He began with the almost obligatory disclaimer that it was any part of his intention to "lessen the security of

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1. Parliamentary Papers, 1817, Vol. I, pp. 219-239.
 2. Hansard, Vol. XXXVI, 1817, pp. 294-6.
 3. Parliamentary Papers, 1817, Vol. II, p. 205.

the property of the Church" and then proceeded to attack the iniquity of lengthy legal proceedings which tithe claims frequently produced. He also quoted the notorious case of Rev Peploe Ward, rector of Cottenham, who had recovered tithe which had been subject to a modus since 1595, but which had been recently set aside by a Chancery decision. The inhabitants had not been able to produce a deed to support the modus they claimed. Curwen argued that unless his measure were adopted, nothing could:

'prevent the church from plundering the community and destroying those exemptions to which they are justly entitled'⁽¹⁾

In support of the Bill, both sides received petitions supporting their case. One from Cumberland - doubtless encouraged if not initiated by Curwen himself - complained that

'Great uncertainty at present prevails respecting the validity of Compositions, Moduses, & prescriptive payments'⁽²⁾

while the University of Cambridge - a considerable tithe owner - viewed "with the greatest anxiety and alarm" an attempt to:

'to overturn those principles upon which for centuries, the wisest lawyers have founded their decisions with respect to tithes ... The law of tithes is interwoven with the Constitution, no less of the State than of the Church and has been guaranteed by every Charter of our Civil Liberties.'⁽³⁾

The arguments were, of course, predictable enough. Predictable

1. Hansard, Vol. XXXVI, 1817, pp. 1070-6.
 2. H C Journals, Vol. 73, 1818, p. 120.
 3. Ibid, p. 140.

also was the response. Curwen presented his Bill in February 1818 using many of the same arguments he had used in the previous year, giving examples of ancient moduses set aside. He was supported by Romilly and Brougham who asserted that the Bill would not harm the Church, but would secure property and prevent unnecessary litigation⁽¹⁾. On the other side, William Scott led the attack. He warned the House that too much notice should not be taken of petitions, which usually took atypical examples and exaggerated them into misleading and discreditable generalisations at the Church's expense. Sir Robert Peel was equally concerned at the slurs he felt were being made on the reputation of the Church. He noted that of the 120 cases brought to light by Curwen's probings only 69 had been initiated by the clergy. Furthermore, the 35 brought by them in the last three years was no proof of the 'excessive litigation' of which Curwen and his friends complained. No doubt the Bill would have been savaged in the Lords; but they did not have a chance to discuss it. On the second reading of the Bill on 16 March, the Commons agreed by 42 votes to 15 to defer further consideration for six months, thus ensuring that the end of the session would intervene. Curwen introduced no further Bills affecting the tithe system.

II

The next significant attempt to reform the tithe system was made

1. Hansard, Vol. XXXVII, pp. 545-557, 1131-1142.

in 1828⁽¹⁾. In that year the far-reaching Bill "to enable Rectors, Vicars & Other Incumbents of Ecclesiastical Benefices to Commute their Tithes by Agreement with Owners of Lands" was introduced⁽²⁾. This was a much fuller Bill than any debated previously and contained many of the proposals later incorporated into tithe legislation. It was a permissive Bill which required the consent of both sides, and also the written agreement of the bishop of the diocese before commutation could take place. Provision was made for three commissioners to supervise the arrangements, at least one of whom was to be a beneficed clergyman. These commissioners would appoint a valuer whose task would be to make a survey of the parish and estimate the average value of the tithes over the previous seven years. The amount awarded would be a corn rent, tied to the average "price or value of good marketable English wheat at the principal market of the City of London". The final result would be incorporated

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1. In the intervening period, the tithe question was from time to time raised in Parliament. Tithe was, of course, one of the 'taxes' which the farming interest tried to lessen, and many parliamentary speeches in the early 1820's made reference to the burden of tithe operating solely on land as part of the general argument that the farmer and landowner were disproportionately heavily taxed. The Select Committees on agricultural distress of 1820, 1821 and 1822 made the same point. Such general grouses did not at this point, however, result in specific parliamentary proposals for redress. In April 1826 there were short debates in Commons and Lords on the propriety of the raising of the tithes by the Rector of St Olave, Hart Street, London (Hansard, New Series, Vol. XV, pp. 562-6 and 721-2). In 1826 also, a short Act was passed enabling Justices from outside a county to act in certain tithe cases (7 Geo. IV cap. 15). In addition numerous petitions were received which either generally requested reform, or alternatively pointed out abuses in a particular parish. Only rarely were such petitions debated.
 2. H.C.Journals, 1828, Vol. II, pp. 283-320.

in a tithe Award which would set down the amounts payable by each proprietor. Provision was made for re-assessment of the value of the tithe vis-à-vis the prevailing wheat prices after a period of years, and a clause was inserted enabling tithe owners to demand a re-assessment of the value of the tithes from land which had been waste but which, after the first Award was made, was brought into cultivation.

This Bill was more significant in its portents for the future than as a viable proposition in 1828. It was introduced in February by Thomas Greene, M.P. for Lancaster, who pointed out that he wished only to enable a standard procedure to be made available, as similar arrangements had been made in particular places and had been found to work satisfactorily⁽¹⁾. None the less, the measure proved too strong for the tastes of many who were cautious of change. The Universities of Oxford and Cambridge both petitioned the House against it, on the dual grounds that a permanent commutation based on the average prices of wheat over a specific period of time was unjust and that collegiate bodies need not be consulted before incumbents of livings of which they held the patronage made agreements for commutation⁽²⁾. Robert Peel was speaking in a dual capacity when he led the attack on Greene's Bill as it stood. As

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1. Substitution of tithe for a corn rent could only take place as a result of enclosure arrangements or by private Act of Parliament. See for example the private Act of 1821 which converted the vicarial tithes of Edgbaston (Warwickshire) to a corn rent fluctuating with the price of wheat in Warwickshire markets: 1 & 2 Geo. IV cap. 35. The procedure by which the corn rent was obtained was very similar to the one outlined in Greene's Bill.
 2. H.C.Journals, Vol. 83. 6 March and 31 March 1828.

Member for Oxford University he was well aware of the opposition of most of his constituents to the measure, while as Home Secretary in Wellington's Ministry he was naturally concerned that the interests of the Church and other property holders should be safeguarded. On the motion to commit Green's Bill, Peel moved that "it be an instruction to the Committee that they should have the power to limit the duration of any bargain or agreement entered into under the provisions of this measure to twenty one years"⁽¹⁾. He was worried about the long-term effects on the Church, and pointed out that if such an agreement as Greene proposed had been made in Norfolk before the improvement of the value of farms due to extensive turnip and barley cultivation, the tithe owners' income would certainly not have kept pace with agricultural improvement. The debate turned on the much-argued question of whether the tithe owner had a right to share in the improvement of the land which the farmer had obtained by expending his capital on it. The House eventually approved Peel's instruction to the Committee by 81 votes to 29. The speeches from the majority side, however, are important. They tacitly, and sometimes openly, acknowledged the need for change in the tithe system, but took exception to the particular measure brought before them. The conservative interest would have been perfectly happy with a measure which permitted temporary conversion of tithe; but it stuck at permanent alienation and insisted upon sharing in the profits of improved agriculture. After all, the

1. Hansard, New Series, Vol. XVIII, 1828. pp. 1151-61. The debate took place on 17 March.

experience of the enclosure movement had taught tithe owners to insist on the latter as a matter of course. A more tractable attitude on this problem was not to be found in the unreformed Commons. Greene's Bill was deferred in committee, the radicals having lost all interest in it once Peel's wrecking instruction has been passed.

None the less, the Bill did re-open Parliamentary interest in the English tithe question. In 1829 and 1830 the number of petitions to Parliament calling for a change in the tithe laws greatly increased. The landowners of Rochester (Kent) for example sent in petitions in 1829 and 1830 calling for

'an early abolition of the Tithe Tax, a measure which would give more satisfaction to the Country and reflect greater credit upon the Legislature than any enactment that has been carried for centuries past.'⁽¹⁾

Many petitions spelt out the reasons for their objection to tithe. To anyone who had studied the pamphlet literature of the period neither the reasons nor the phraseology were surprising. The inhabitants of Llanthwy (Monmouth) for example stated that the tithe system was "a cause of the most violent and inveterate disputes" and represented an absolute bar to agricultural improvement⁽²⁾; while petitioners from Holt (Norfolk) concentrated on the illegitimacy of a system which was nothing more than a "Popish

1. H.C.Journals, Vol. 85, 18 May. See also Vol. 84, 4 June.
 2. H.C.Journals, Vol. 85, 12 March 1830.

abuse"⁽¹⁾. There were also those who linked the dual complaints of rising poor rates and tithes together and attempted to show that the latter was a contributory factor of the former. George Gunning of Frensbury (Kent) in petitioning Parliament to amend the poor laws noted that the present system of paying tithes:

'checks improvement, paralyzes industry, promotes pauperism and tends to destroy the virtuous spirit and meritorious exertion of the labouring poor. The Petitioner is firmly persuaded that by fixing a percentage on real rents in lieu of tithes, that it would soon decrease vagrancy, lessen crime and promote the happiness of all classes of society.'⁽²⁾

Most of these petitions were merely presented, ordered to lie on the table and thereafter ignored. Due to the persistence and parliamentary manoeuvring of a small number of radical M.P.'s, however, one or two petitions were formally debated on the floor of the House. Foremost among these was Joseph Hume, Member for Aberdeen. Hume, in true radical style, attacked tithe as a prop of the Church Establishment he fought so hard to dismantle, and sought to pin on the tithe system most of the ills to which the country was subjected. He initiated a short debate in the Commons in 1830 on the Rochester petition, noting recent well-attended meetings at Rochester and Penenden Heath which had passed resolutions to abolish tithe. If tithe were to be abolished then Hume declared

1. Ibid. 5 March.
2. Ibid. 8 February.

he was sure:

'that many persons would employ labourers for the purpose of improving their property which under the existing system they could not think of doing.'⁽¹⁾

The abolition of tithe, therefore, would lead to a lowering of the poor rates, and the general advancement of the farming interest. Pure religion would also benefit, as Hume argued, twisting the knife:

'It was well known in fact that religion flourished most where political establishments for its support were unknown.'

In 1831, Hume took up the case of the parishioners of Havering-atte-Bower (Essex) who were suffering from tithe owners demanding tithe in kind of every tenth potato and pail of milk following a resisted attempt to impose higher compositions and put aside a modus for hay. Hume gleefully quoted letters from a tithe farmer demanding more eggs and threatening legal proceedings to recover them. An admittedly thin House witnessed an acrimonious wrangle between Hume and Sir Robert Inglis, Peel's successor as Member for Oxford, before the debate was concluded.⁽²⁾

Hume's activities in the Commons were matched in the Lords by Lord King who pointed out the "prevailing spirit of complaint" about the tithe system. He catechized the impost as a public nuisance which had affected the type and quality of cultivation and

1. Hansard, Vol. XXIII, 1830. pp. 818-826.

2. Hansard, 3rd Series, Vol. II, 1831, pp. 29-48.

contributed to the misery of the unemployed labourers⁽¹⁾. The Swing Riots, of course, presented the radicals with a magnificent opportunity to taunt the establishment with what they saw as the natural result of the status quo, and King more than once roused members of the episcopal bench to hasty, and sometimes unwise, defences of the tithe system.

Hume was undoubtedly right when he argued in presenting the Rochester petition that

'a very great change had taken place in the minds of men of late years'.

The radical writers had been hard at work, and the Swing Riots seemed to fulfil many of their predictions, strengthening the case for reform. The established church felt itself weak and wide open to attack after what it saw as the desertion of Peel and Wellington over Catholic Emancipation in 1829. The 1830 election weakened the position of the 'Ultras' and brought reform a measurable step nearer. The Lords' rejection of the first reform Bill in October 1831 was quickly, and not altogether unfairly, blamed by the radicals on the bishops; and it seems fair to say that in the 1830's the church stood in greater danger of imminent disestablishment than at any time before or since⁽²⁾. Reform must come, and a substantial section of the Church knew it. Recognition of the need for internal

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1. In presenting a petition from the inhabitants of Southampton, Hansard, 3rd Series, Vol. I, 1830, pp. 1109-1115.
 2. For the unpopularity of the Church see O Chadwick, op. cit. Vol. I, pp. 24-47.

reform and reorganization was not limited only to those clerics who spoke on reform platforms in 1830 and 1831⁽¹⁾. Consequent upon this was the realization that something must be done about tithe. It is significant that, although absurdly late in the session, Archbishop Howley of Canterbury did introduce in May 1830 a permissive Bill designed to permit tithe owners to make compositions varying with the price of corn valid for 14 or 21 years.⁽²⁾ The Church was preparing itself for reform on the best terms it could get.

III

Between 1832 and 1836 numerous measures for tithe commutation and reform were discussed in Parliament, and before the Tithe Commutation Act was passed, the all-embracing powers of tithe owners in respect of initiating prosecutions were substantially diminished⁽³⁾. Attention had long been focussed on the evils arising from litigation, and a number of men of conservative cast of mind felt that the Church was being shown in an unnecessarily poor light by vindictive prosecutions. Accordingly there was a wide measure of agreement over what came to be known as Lord Tenterden's Act which was passed in 1832 and limited tithe owners to claiming tithe which had fallen due during the previous thirty years⁽⁴⁾. Unfortunately a measure

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1. G F A Best, op. cit. pp. 239-295 for a discussion of the Church's attempts at reform.
 2. Hansard, 3rd Series, Vol. II, 1830, pp. 499-501.
 3. For details of these measures, see above Chapter III, pp. 78-79.
 4. 2 & 3 Wil. IV cap. 100.

which was designed to diminish complaints about the tithe system served only to exacerbate it. The Lords introduced a clause into the Bill which enabled tithe owners to institute long dormant claims for a period of one year. The result surprised everyone, and delighted the radicals who had found their support in the tithe campaign gradually waning after the Reform Bill crisis had passed. The period of grace, 16 August 1832 to 15 August 1833 saw the initiation of an unprecedentedly large number of tithe cases by tithe owners who determined to establish their rights before the doors were closed. Just before the end of this period William Blamire, M.P. for East Cumberland, asked the Solicitor-General what plans he had to deal with the rash of litigation⁽¹⁾. Sir John Campbell admitted that the evil of unfettered tithe suits was "of a tremendous kind" and that the clergy seemed to be infatuated by the prospect of initiating legislation. The next day, Blamire introduced a Bill to suspend all tithe suits until the end of the next session⁽²⁾. He said that in Kendal alone 1500 suits for tithe had been recently commenced⁽³⁾. His measure readily passed the Commons; but the Bishop of London led a strong episcopal party in stalling the Bill. Blamire's measure had to be introduced in the next session⁽⁴⁾.

This incident undoubtedly helped to increase tension and opposition

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1. Hansard, New Series, Vol. XX, pp. 608-610, 14 August 1833.
 2. Parliamentary Papers (H.C.) 1833, Vol. IV, p. 497.
 3. Hansard, New Series, Vol. XX, 1833, pp. 794-796.
 4. It became law in 1834 as 4 & 5 Wil. IV cap. 83.

to the Church. Once again the Church was singled out for particular criticism although a large number of the suits complained of had been brought by lay impropiators. Feeling against the tithe system developed into a general attack on the ecclesiastical establishment. As Lord Brougham said:

'Those proceedings [the tithe suits] exasperated the country in an unparalleled degree and that the general hatred of Tithe and Rate and Pluralists and Political Priests and whatever else is made the ground of an attack upon the Establishment, never reached a higher pitch of exacerbation or spread more widely through the Community than of late.'⁽¹⁾

A thorough-going Tithe Bill could not be long delayed in such an atmosphere; and those who wished to preserve the Church and its temporal establishments intact knew that they must show more or less united support for any Bill which proposed a commutation of tithe. Only thus could the political temperature be cooled and the radicals balked of their prize. It was therefore consideration of possible alternatives which brought most M.P.'s to agreement over tithe commutation. The principle could no longer be denied. The crucial criteria now were that the measure should be viable and should preserve clerical incomes.

In each of the parliamentary sessions of 1833, 1834, 1835 and 1836 a major Bill to commute tithes was introduced by the government of the day - three by Whig administrations and one by Peel's short

1. Edinburgh Review, Vol. LVIII, 1834, p. 502.

Conservative government of 1834-5. It should be noted that in addition to the political situation, a series of good summers between 1833 and 1836 brought with them low prices both for corn and livestock, and renewed cries of 'agricultural depression'⁽¹⁾. The crop of petitions received by Parliament in these years frequently linked the usual agricultural grievances with complaints about tithe. Parliament was made well aware of the pressures combining to make measures to deal with tithe necessary, and there was no lack of radical members prepared to hammer the point home on the floor of the House. In April 1833, Lord Althorp, Whig Chancellor of the Exchequer, introduced a Bill to commute tithes to ~~by~~ a corn rent fixed by tithe valuers on the basis of the actual receipts of tithe owners over the previous seven years⁽²⁾. A tithe valuer was given the power to raise or lower this sum by not more than 10% if he felt that the amount arrived at by strict average was either too high or too low according to his valuation of the tithes payable. For the first year of the operation of the Act, the consent of the tithe owners and a majority of the tithe payers would be necessary to effect commutation. Thereafter, on the request of any one party, commutation would be carried out compulsorily. In introducing the Bill, Althorp laid stress on two major benefits which would accrue from its passing - increasing good relations between incumbent and parishioners, and stimulating agricultural

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1. E L Jones: Seasons and Prices, 1964, pp. 160-165.
 2. Parliamentary Papers (H.C.) 1833, Vol. IV, p. 431.

investment.

All the speakers in the debate which followed were careful to point out that they wished to see some measure of commutation, but many were apprehensive about specific details of the Bill before them⁽¹⁾. Peel led the doubters. His main objection was the clause making commutation virtually compulsory after a year. From the radical camp Cutlar Fergusson argued that tithe payers should have the right to purchase lay tithes outright. The committee stage of the Bill was not reached until July, when Althorp, more in hope than anticipation, agreed to omit all the compulsory clauses⁽²⁾. Many members, however, quite reasonably argued that with the administration evidently not decisive, it would be better to postpone the Bill until the next session. The committee stage of the Bill was deferred, and the Bill was killed.

Early in the next session the Commons set up a committee to look at the entire question and as a result the Commons resolved in April 1834:

'That it is expedient to effect a Commutation of Tithes and to abolish the collection & payment of Tithes in kind throughout England & Wales and in lieu thereof to substitute an annual payment to the Parties entitled to Tithes, with a power for the redemption of such payments under certain conditions.'⁽³⁾

Althorp's 1834 Bill included provision for each of these desiderata.

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1. Hansard, New Series, Vol. XVII, 1833, pp. 273-291.
 2. Ibid. Vol. XIX, 1833, pp. 375-382.
 3. H.C.Journals, Vol. 89, 18 April 1834.

It was a more radical measure than its predecessor and proposed to settle tithe henceforward as a fixed proportion of the rent of the land from which the tithe fell due. Althorp's experiences of the previous session had apparently convinced him that the commutation of tithe was too complicated to establish a general rule for the whole country. He proposed therefore that a separate valuation should be made of the land in each county by different valuers. The proportion of the tithe which would be awarded was to be determined locally at Quarter Sessions, depending on cultivation of the land. The two important and novel principles which Althorp sought to introduce were that local knowledge should be brought to bear on the complex question of how much tithe was to be awarded in a particular area, and that tithe should henceforward vary in direct proportion to the rental of the land rather than be tied to the amount of produce. This would meet the important objection that tithe, being a tax on yield, discouraged agricultural improvement. Finally, Althorp proposed to permit the landowner to redeem the tithe arising from his land at 25 years purchase.

As has been said, there was considerable goodwill shown to the principle of commutation. The Times, commenting on Althorp's Bill, said that the tithe system was

'an irksome and tormenting system and for that reason, if no other, grossly impolitic in an age like this'.⁽¹⁾

Althorp's measure, however, proved too novel and too controversial.

1. The Times, 17 April 1834.

It was easy to agree on the principle yet reject the mechanics. Once again, Peel expressed the gravest doubts. He complained about the Bill's vagueness, and thought it unfair that Devonshire and Kent should have to bear a much higher rate under Althorp's proposals⁽¹⁾. He preferred voluntary settlements, and was supported in this by many members. It was clear that the measure as it stood would not meet the case, despite the changes which Althorp was prepared to make. As in 1833 there was not sufficient time to thrash out the various problems brought out by the debate. It was universally felt that the Irish tithe situation required more parliamentary time, and consequently the English tithe Bill was sacrificed for discussion of the abortive Irish tithe Bill⁽²⁾. When the Irish situation brought the fall of Grey's government in July 1834, no further progress had been made with the English tithe proposals.

The responsibility of trying to steer a successful tithe Bill through Parliament, therefore, devolved on Sir Robert Peel and his minority Conservative government. It was evident from his speeches in Opposition that Peel would not countenance any scheme which included compulsory commutation. He was, however, committed to the principle of commutation, and when he brought forward his Bill in March 1835 it was certainly the most comprehensive measure yet produced. In many particulars it was followed by Lord John Russell when he introduced his successful Bill in the next session. Peel said that the Bill, which had been foreshadowed in the King's Speech,

1. Hansard, New Series, Vol. XXII, 1834, pp. 818-842.

2. For which see E Halevy: The Triumph of Reform 1830-1841, 1961 ed., pp. 169-174.

was a vital matter:

'Not mere party consideration but involving considerations of much general importance attended by great complexity of details and affecting to a considerable extent the interests of the community at large.'⁽¹⁾

He proposed to substitute for tithe in kind a corn rent varying with the price of wheat, barley and oats subject to revision every seven years. After this, the main principle was that commutation should be voluntarily agreed to by not less than two thirds of the tithe owners and two thirds of the tithe payers according to value. Each agreement thus arrived at should be checked by tithe commissioners "to prevent fraud and collusion" between the parties, and to ensure that the sum agreed to be paid had been arrived at by the standard procedure laid down in the Act. Peel wished to provide opportunities for those earnestly requiring tithe commutation to effect it as far as possible relying on local knowledge, "a sense of common interest, a disposition to remove all difficulties and to get rid of the expenses".

Peel's plan did, of course, presuppose good will and an earnest desire to commute on both sides. There was no lack of members in the Commons prepared to argue that he was being much too sanguine. Mr Rolfe, M.P. for Penryn, baldly stated that not 1 in 20 tithe owners would oblige by agreeing to commute. Lord John Russell believed that compulsory commutation was inevitable, and that the

1. Hansard, Vol. XXVII, 1835, pp. 170-202:

present difficulty even in obtaining tithe compositions showed how difficult it would be to get voluntary agreement. William Blamire, on the other hand, welcomed permissive legislation because he could not see how compulsory commutation could be made to work fairly over the whole country.

Peel had brought forward a very comprehensive and cogently argued defence of the voluntary principle. He did so, however, only a month before the Irish situation forced him out of office. On the tithe question, he had appealed for all-party co-operation and certainly on most issues concerning tithe there was no great division between Whigs and Conservatives. He knew, however, that any Whig administration which attempted to introduce tithe commutation would include compulsory clauses. In 1835-6 this was the only issue which divided the parties over English tithe.

In many respects, the Tithe Commutation Bill introduced by Lord John Russell in February 1836 was a carbon copy of Peel's measure. The central machinery was almost identical. There were to be three tithe commissioners in charge of the progress of commutation, with powers to appoint assistants to supervise or direct individual commutations. Commutation was to be effected by taking the average value of the tithes over the previous seven years and laying out the sum thus obtained in purchase of equal parts of wheat, barley and oats according to the prevailing prices of grain over the same period. This was then converted into a money payment which was to be known as the tithe rent charge. The major departure from Peel's

scheme, of course, was the re-introduction of compulsory clauses if the parties could not agree. Such were the bare bones of an extremely complex proposal. It could not be called a party proposal. Both parties sought strenuously to reach the best settlement without recourse to party divisions. Also, Russell, with proper diffidence, was well aware that the Bill which he had introduced was not perfect. He admitted that it could not possibly meet all the objections which might be raised, considering the different ways in which the tithe system might work in different parts of the country - or indeed in contiguous parishes. His object was, he said, "to produce as little disturbance as possible to existing interests". He agreed that Parliament should have the opportunity of a "thorough sifting" of the Bill, and he would consider with an open mind any amendments which members might make⁽¹⁾.

Russell was certainly as good as his word. He was quite well aware that his Government was concerned primarily to get a commutation of tithe, and was not sufficiently on top of the details to insist on every clause as it stood when the measure was first introduced. He was convinced that a compulsory commutation had to be introduced, but beyond this he kept a fairly open mind. He invited, and got, long debate which ranged over the whole subject. On the first reading, Peel pointed out that the plan for arriving at the rent charge would mean wide discrepancies, depending on the strictness with which tithe had been collected during the years taken as the

1. Hansard, Vol. XXXI, 1836, pp. 185-210.

base for the average. It was virtually impossible to avoid this problem as Peel himself noted that it was no fairer to relate tithe to rent; and indeed his own plan of the previous session, although both sides would have had to agree to it, laid itself open to the same criticism. Particular criticism was levelled at a clause in Russell's Bill aimed at standardizing the percentage of the total tithe to be deducted for expenses of collection. Russell had proposed (Clause 29) that in cases where the average sum collected for tithe was either less than 60% or more than 75% of the total value of the tithe before collection, the amount considered for rent charge should be standardized at 60% or 75% respectively⁽¹⁾. On first reading, Robert Inglis argued that this arbitrary reduction was an unwarranted attack on a valid species of property. The Times argued that the 25-40% reduction in the theoretical value of the tithe would go straight into the pockets of the landlords, and stated:

'We for our parts do not see what the clergy of England have done to merit such a spoliation'.⁽²⁾

By no means all of the argument was on one side, however, and Mr Bennett, member for South Wiltshire, believed that a 25% reduction was almost always too low⁽³⁾. Russell fought hard in committee to retain some measure of control over deductions for expenses of collection, but was forced in the end to drop the clause and replace

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1. Russell's first Bill is Parliamentary Papers (H.C.) 1836, Vol. IV, p. 125.
 2. The Times, 11 February 1836.
 3. Hansard, Vol. XXXI, p. 697. Second reading of the Bill.

it with one which gave the tithe commissioners discretionary power to raise or lower the average value of the tithe by not more than 20% if they had reason to believe that, for any reason, the averages did not accurately represent the proper value⁽¹⁾. Another attempt to fix an additional rent charge per acre at 15/- when ground was newly cultivated with hops⁽²⁾ was defeated in committee, and a new clause substituted which introduced the concept of 'Ordinary' and 'Extraordinary' rent charge on hop grounds and market gardens and left it to the commissioners to fix the precise amount in individual cases⁽³⁾. Many hours were spent discussing the measure both on the floor of the House and in committee, and the general conclusions reached in these lengthy deliberations were that, while retaining the principle of compulsory commutation, as much scope as possible should be given to commissioners to decide what was best in individual circumstances. Thus, precise amounts of rent charge laid down in the Bill were queried and dropped as the government realised the full extent of the geographical differences, and thus how dangerous it was to make general rules about particular instances. The committee was also concerned to explain more precisely the functions of the commissioners, the procedure on making maps and plans, depositing Awards and making copies. It also laid down rules for the payment and recovery of expenses connected with commutation

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1. 6 & 7 Wil. IV cap. 71 clause 38. Professor Chadwick is in error when he says that the standardized calculation of 60-75% was incorporated in the Act. The Victorian Church, Vol. I, p. 142.
 2. Original Bill, clause 31.
 3. 6 & 7 Wil. IV cap. 71 clause 42.

which had been left vague in the government's original measure. Such revisions largely accounted for the extension of this much amended Bill from its original 54 clauses to its final 97⁽¹⁾.

The changes in the Bill were the subject of remark by the government's own supporters. Mr Thomas Pemberton, M.P. for Ripon, remarked angrily in May that there was hardly a single clause in the Bill that had not been altered since its introduction three months earlier:

'In fact the measure was so little the same that the supporters of the Government were now called upon to vote for the very measure which the former night they had repudiated.'⁽²⁾

He was, of course, exaggerating, but he also mistook the purpose of the government in introducing the measure. The Whigs wanted all-party support and they knew that the country desired a commutation Act as soon as possible. It might well have been true, as Jasper Parrott (Totnes) and other members insisted, that the House was still not sufficiently on top of the complexities of the situation to legislate upon it; but the government would have no truck with his proposed remedy of a commission to enquire into the state of tithes⁽³⁾. Russell seemed content that many of the most radical criticisms of his measure cancelled each other out. He pointed out that the Bill was called by the two sides "A clergyman's Bill"

1. The successive drafts of the Bill are to be found in Parliamentary Papers (H.C.) 1836, Vol. IV, pp. 125-399. These also include the amendments made by the Lords in the summer of 1836.
2. Hansard, Vol. XXXIII, 1836, p. 505.
3. Ibid, p. 503.

or "A landlord's Bill", and accepted this as proof that the government was steering a middle course between two extremes⁽¹⁾. He wished to pass a Bill which gave least offence to the greatest number of people, and was quite prepared to consider amendment of the Act in the light of practical experience if any parts of it proved difficult, or inordinately expensive. Thus, he was able to discount Parrott's unsupported claim that the Bill would raise the level of tithes by 20 or 30% in Cornwall and that its passing would lose him the support of every Whig in the county⁽²⁾.

After much amendment, Russell's Bill passed the Commons on 27 June⁽³⁾, and the Lords were not disposed to wreck it. Working parties were set up between the Commons and the Lords to thrash out remaining differences, most of the Lords' contingent comprising lay impropiators and bishops⁽⁴⁾. They insisted on only two amendments of importance - that the bishop of the diocese should see every agreement relating to clerical tithes before it was confirmed, and that land not exceeding 20 acres could be given in part exchange for certain tithes if this was acceptable to both sides. The bishops seemed convinced that this measure was their best chance of converting tithes into a more secure property without any loss to themselves, and the debates in the Lords included none

1. Hansard, Vol. XXXI, 1836, p. 721.

2. Ibid, Vol. XXXIII, 1836, p. 503.

3. H.C.Journals, Vol. 91.

4. See the Diary of Lord Hatherton for a description of a meeting in the Lords: S.R.O.: D260/M/F/5/26/13. 12 July 1836.

of the fundamentalist opposition to tithe reform which would immediately have killed any chance of legislation in the 1810's and 1820's⁽¹⁾. Archbishop Howley, in particular, was much in favour of commutation and did a considerable amount of work in committee to effect it.

The Bill finally received the Royal Assent on 13 August 1836. It was received in almost total silence. It was not a triumph of statecraft. It did not bear the stamp of firm government. It was a measure of immense complexity, significantly changed during the process from conception to execution, and the major triumph was that it had reached the statute book at all when its predecessors had failed. Governmental compromises had removed the cutting edge of opposition from most quarters, and the measure received lukewarm approval. It seemed that almost everyone had reservations on points of detail, but that almost no-one was prepared to push these to the stage of further obstruction of a measure which in principle everyone desired. It remained to be seen whether this parliamentary hybrid would remove the sting of controversy from the tithe system.

IV

The measure which the tithe commissioners had to put into effect during the next fifteen years or so deserves consideration and analysis. Its main purpose, of course, was to eliminate for ever the vagaries of tithing in kind, and the bitterness and acrimony

1. Hansard, Vol. XXXIV, p. 1836, pp. 1291-1309.

which so often accompanied it, and to substitute a known, recorded and easily verifiable money payment which was not fixed for all time but was to fluctuate according to the prevailing price of the main arable crops - wheat, barley and oats. The Act made provision for two types of commutation, that voluntarily agreed upon by tithe owners and tithe payers, and compulsory commutation which was instigated by the tithe commissioners themselves. Russell had originally envisaged giving parties only six months to reach voluntary agreement, after which the tithe commissioners would make a compulsory Award. He was quickly persuaded, however, that such a short space of time was not feasible and lengthened it, firstly to one year and finally in the Act (Clause 36) to just over two years. Compulsory commutation was to begin on and after 1 October 1838.

The chief executives of tithe commutation were to be the tithe commissioners. Three were to be appointed, two by the Crown and in practice the Home Secretary - and one by the Archbishop of Canterbury. The first three commissioners appointed were William Blamire, Thomas Buller and, appointed by the Archbishop, Rev Richard Jones. Blamire had been Member of Parliament for East Cumberland, and had taken an active part in tithe commutation debates, during which he had argued for the maximum opportunity to be given for voluntary commutation. Under the terms of the Act, designed to separate executive from legislature, he was required to vacate his seat (Clause 5). The tithe commissioners were to report to the Home Secretary on their proceedings, and provide a written report for

Parliament every year on the state of commutation⁽¹⁾. The tithe commissioners operated from London. In the field they relied upon the work of the assistants they were empowered to appoint to superintend the mechanics of individual agreements, Awards and apportionments. They were allowed to claim a maximum of £3 for every day that they were engaged either in travelling to or working upon a commutation. The salaries of tithe commissioners and their assistants were to be paid out of the Consolidated Fund. Other expenses of the commutation were to be paid by the parties concerned. If witnesses or documentary evidence had to be produced the general rule (Clause 73) was that those interested in their production should pay the costs involved. The costs incurred in the employment of tithe valuers and surveyors to make a tithe Award covering the whole tithe district were to be payable jointly by the land owners and tithe owners "in such Proportion, Time and Manner as the Commissioners or Assistant Commissioners shall direct" (Clause 74). The drawing up of the apportionment - which set out how much rent charge each piece of land should bear - was to be paid for exclusively by the landowners "in rateable Proportion to the Sum charged on the said Lands in lieu of Tithes by such Apportionment" (Clause 75). In comparison with enclosure proceedings, therefore, it is noticeable that tithe owners were required to bear part of the cost. A tithe owner's allotment at enclosure was almost invariably presented to him ready fenced at no cost to himself⁽²⁾.

1. See below, Appendix VIII, p. 443 for an abstract of their reports.
 2. See above, Chapter VIII, p. 304.

The procedure for setting in motion a voluntary commutation was very similar to that employed in enclosure business. The owners of not less than one quarter of the land or tithes by value could call a meeting to discuss commutation. At that meeting if two-thirds of the land and tithe owners^{by value}_^ were able to agree upon a sum to be paid annually by way of rent charge, this would bind the remainder of the interested parties (Clause 18). Thus, as at enclosure, the few substantial property owners could dictate terms to the many whose stake was smaller. Usually, the conflict of interests was not between great and small landowners, but when it was, the eighteenth century norms of property right were still enforced. The agreement to commute thus made became the 'Provisional Agreement' which remained provisional until the bishop of the diocese had seen it, the patron of the living had signified his agreement (when any ecclesiastical tithe was involved) and the tithe commissioners had inspected it to ensure that there had been no "Fraud or Collusion" and that it represented a fair equivalent for the tithe. This they normally did after reports from one or more assistant commissioners on the equitability of the agreement.

Soon after the confirmation of the agreement, or at any stage before this, a meeting of land and tithe owners should be called to appoint a valuer, or valuers, to apportion the rent charge on particular sections of land. This, of course, would require the area to be mapped and plans drawn showing precisely which lands were covered by rent charge and to what extent. The valuer, there-

fore, worked from an agreed total to be awarded and apportioned as fairly and accurately as he could on individual plots of land. Provision was made for appeals to be heard by an assistant tithe commissioner if anyone felt that he was required to pay more than his fair share of the rent charge. Thereafter, recourse could be had to the courts of law if any party remained unsatisfied. Disputes about the validity of moduses could likewise be decided by the assistant commissioners, but if a modus was accepted by all parties it was enshrined in the tithe Award and remained payable exactly in the same manner and on the same lands as before. Thus, the tithe commissioners would possess records of every modus subsisting in the kingdom, and there would be no further grounds for dispute.

A standard procedure was laid down for ascertaining the corn rent payable when the parties could not agree. The commissioners were empowered to make compulsory Awards in every parish in England and Wales which had not submitted an agreement by 1 October 1838 (Clause 36). They were not required to wait until petitioned by anyone having an interest in the commutation, although they might delay making a compulsory Award until it was convenient for them to do so. The commissioners (Clause 37) were to ascertain the average value of tithes taken in the seven years from Christmas 1829 to Christmas 1835. If the tithe had been taken wholly or partly in kind during the specified period then "all just Deductions on account of the Expences of collecting, preparing for Sale and marketing" were to be made. The tithes, however, were to be valued

without deductions for county or parochial rates. The sums so obtained were then to be converted into a rent charge by assuming that they were laid out in the purchase of equal portions of wheat, barley and oats at prices published each year by the Comptroller of Corn Returns in the London Gazette (Clause 76). In January of each year he would state the average prices per imperial bushel of each crop during the previous seven years. The scale was first fixed in December 1836 when £100 of tithe would purchase 94.95 bushels of wheat, 168.42 of barley and 242.42 of oats. These were the calculations on which tithe valuers throughout the country worked in ascertaining the initial rent charge and the magical figures appear regularly on tithe Awards with the appropriate calculation for each tithe district. This settlement was welcomed happily enough by most tithe owners. They now had a clear statement of the value of their tithes, the value being tied to the prevailing prices of arable produce. Initially, tithe owners would expect to do well as the prices of corn during the previous seven years had been on the low side - especially in 1834 and 1835 - and it was confidently predicted that prices would pick up, thus raising rent charges. Also much in the tithe owners' favour was the method of recovery of outstanding rent charge. If rent charge was not paid within 21 days of falling due the tithe owner could enter the defaulter's lands and distrain the amount outstanding (Clause 81). If the amount could not be distrained, then the Sheriff was empowered to issue a writ taking possession of the defaulter's property in order to discharge the debt (Clause 82). This was a much cheaper and

more effective way of recovery than was previously available, partly because it was now so much easier to ascertain the precise amount of the tithe owner's claim. Against these benefits to the tithe owner, however, must be set the fact that the Act finally took away from them the right, so lucratively exercised during the enclosure movement, to share in the increased produce of the land. This was no longer to be a tax on yield, and the agricultural improvers had belatedly won their point. The depression of 1833 to 1836 seems finally to have killed support for the concept of the tithe owner as co-producer with the farmer, entitled to share the fruits of agricultural improvement without any of the expense. In this respect, it is instructive to contrast the debates of 1828⁽¹⁾ with those of 1835 and 1836. In the latter debates, it was clearly seen that the idea which had perhaps done more to block tithe reform than any other was no longer acceptable. Tithe must be safeguarded as a species of property. It should not be allowed to deter the efforts of those who wished to improve.

The tithe owner was, therefore, losing a precious advantage in accepting the Act. Subsequent price-trends, as it happened, did little to compensate. The average value of tithe rent charge between 1836 and 1886 (1835 = £100) was £102.11.9. The 1850's were relatively low and the 70's relatively high. The repeal of the Corn Laws in 1846 made little appreciable difference to the rent charge, and the long period of relative price stability did much to make

1. For which see above p. 331-333.

rent charges acceptable⁽¹⁾. From the 1880's onwards, however, cereal prices fell steadily and the rent charge fell to just over £66 in 1901. Severe price pressures brought a further tussle between tithe owners and payers in the early 1930's before the 1936 Tithe Act⁽²⁾ extinguished most tithe altogether. In the period under study, however, it is fair to say that the application of the Tithe Commutation Act was greatly aided by the fact that farmers soon learned to know how much they would have to pay and budgeted accordingly. The clergy, though no longer receiving the rewards of improved production, were at least assured of a regular income with little or no trouble of collection. Above all, the opportunities for evasion, collusion, misunderstanding and friction which were provided by the old system with its anachronistic complexities were swept away, and the tithe owner and tithe payer could now resolve their differences around specific legislation, rather than doubtful precedent and contradictory case law. An opportunity for mutual trust was provided, and for the most part, gratefully accepted by both sides.

Three other points should be made. Firstly, provision was made for separate treatment of the tithe of hops, fruit, garden produce and coppice wood. Because most of these tithes were particularly valuable, and because they had produced so many disputes, it was thought necessary to deal with them separately. Thus (Clause 40)

1. For a brief summary of the subsequent history of tithe rent charge see Best, op. cit. pp. 470-479. See also J A Venn: Foundations of Agricultural Economics 1933.

2. 26 Geo. V & 1 Edw. VIII cap. 43. For a fair example of the polemic of the 1930's see D Wallace: The Tithe War 1934.

hops and orchard tithes were to be separately valued by assistant commissioners, according to the value of the produce locally over the previous seven years, and the sum obtained added to the ordinary rent charge. A similar procedure was adopted for tithe of coppice wood (Clause 41). Secondly, the Act did not commute all tithes. It was felt that it would create too many problems of definition and title to commute certain tithes of generally little value, but of uncertain incidence. To attempt a definition of the value of personal tithes in a particular parish, for example, might be an enormously time consuming, and therefore expensive, business which would add unnecessarily to the burden both of the parties concerned and the public purse. It was therefore decided (Clause 90) that the Act would not extend to Easter Offerings, mortuary and surplice fees - which were not strictly tithes at all - or to tithe of fish or personal tithes, except those due from mills or mineral workings. It was this clause which led indirectly to tithing anachronisms which survived even into the second half of the twentieth century. Professor Chadwick notes the right of the Vicar of Cockerham (Lancs) to tithe fish caught at the mouth of the River Lune which was not commuted until 1961⁽¹⁾.

Finally, Clause 80 of the Act specifically transferred the burden of tithe payments from the tenant to landowner, in that it empowered a tenant to deduct his rent charge payments from the rent payable to the landlord. In many instances, of course, this procedure had long been adopted and it is clear that any tenant taking on land

1. O Chadwick, op. cit. p. 142.

would ascertain the tithe burdens he would be expected to shoulder and make the appropriate calculations in his lease or rental agreement. The clause was of use, however, in indicating clearly who was responsible in cases of dispute; and tenants would no longer be cited in any tithe suits. When in 1891 a crisis occurred over tithe payment, Parliament restated the principle of landlord's responsibility for tithe payment in unequivocal terms, and thereafter tenants had no responsibility for the payment of rent charge - even as 'middlemen'⁽¹⁾ .

The Tithe Commutation Act of 1836 remained the definitive statement on tithe rent charge for almost a century. In the years immediately after its passing, however, it was in certain respects amended. The amendments introduced few new points of principle but were concerned to redefine and explain doubtful cases, and to facilitate the execution of tithe Awards. Easily the most important of these was an Act passed in 1838 to facilitate the merger of tithes in land⁽²⁾. This measure enabled those who held the tithes of the land they owned to merge the tithes with the land and so extinguish the charge entirely. It was clearly an unnecessary expense to value and apportion rent charge on land held by the tithe owner, and although it was not mandatory, many landowners did take the opportunity of signing a deed of merger extinguishing their tithes. By 1851, 13,160 separate mergers of land and tithes had been enrolled by the tithe commissioners⁽³⁾. An Act "to explain and amend the Acts for

1. 54 & 55 Vict. cap. 8.

2. 1 & 2 Vict. cap. 64.

3. See below Appendix VIII.

the Commutation of Tithes" passed in 1839⁽¹⁾ enabled mergers of tithe with glebe land to be effected and also enabled agreements to be made to commute Easter Offerings and the other charges not commutable under section 90 of the 1836 Act. Again this clause was never intended to lead to later compulsory clauses, but it did enable comprehensive commutation of every kind of tithe to be made in those districts in which there was no dispute. A further clause gave detailed instructions on the procedures to be followed when boundary disputes occurred, hindering the progress of commutation. The 1846 Tithe Act⁽²⁾ contained a clause designed to speed remaining commutations, and also to enable the smallest portions of tithe rent charge to be redeemed. It was permitted for rent charges not exceeding 20/- to be redeemed after apportionment by agreement between land and tithe owners, but in any case at not less than 24 years' purchase. Such a provision had been urged by the tithe commissioners as there were commutations which were being delayed because only very small rent charges were to be apportioned - often because most tithes had been merged or exonerated at enclosure - and the parties were reluctant to have a full Award and apportionment made. In certain cases, tithe redemption would save disproportionate expense.

The amendments made after 1836 were all designed to facilitate commutation rather than alter the principles upon which it was founded. From the yearly reports submitted by the tithe commissioners

1. 2 & 3 Vict. cap. 62.

2. 9 & 10 Vict. cap. 73.

to Parliament it seemed that commutation was proceeding smoothly with few disputes and little acrimony. To understand the process of commutation fully, however, it is necessary to look at the agreements and compulsory commutations in some detail. Only thus may it be understood how the commissioners worked and what criteria they adopted to accomplish their difficult task. Only a study of local tithe Awards and the negotiations which preceded them can reveal how successful tithe commutation was.

CHAPTER X: The Operation of the Tithe Commutation Act in Staffordshire

In Staffordshire, as elsewhere, landowners and titheowners alike quickly dispelled fears that few agreements for permanent tithe commutation would be made without the compulsory intervention of the newly established tithe commissioners. To this extent, Peel was proved right in his belief that the parties concerned should have ample opportunity to make their own arrangements. Russell, however, was correct in assuming that a purely voluntary measure would by no means meet the case. In Staffordshire, tithe awards and apportionments were necessary in 268 tithe districts⁽¹⁾. Of these, 120 (44.78% of the total) were concluded voluntarily and 148 (55.22%) compulsorily. In a few of the latter, voluntary agreements had been unsuccessfully tried and it seems not unreasonable to suggest that in about half of the total tithe districts the parties were prepared to make a serious attempt at voluntary commutation. There were, of course, inducements for them to do so. Voluntary agreements were nearly always quicker, easier and therefore cheaper to arrange and effect than compulsory ones, a point which the tithe commissioners, anxious to boost the number

1. Tithe districts were established by the tithe commissioners to provide opportunity for smaller, more homogeneous units than the parish. While many parishes were left as tithe districts in their own right, others were divided into several districts, with a separate award, map and apportionment for each. Eccleshall parish was divided into no fewer than 20 tithe districts, and Leek into 12. See below, Appendix IX.

of agreements, emphasized in a circular of August 1838⁽¹⁾. Compulsory commutation often necessitated the production of evidence and the examination of witnesses before an assistant commissioner, and their expenses had to be met.

Nationally, voluntary agreements were quickly achieved. The tithe commissioners reported that 77% of voluntary awards had been confirmed by them by 31 December 1840, and that 97.73% were complete by the end of 1844⁽²⁾. The Staffordshire situation very closely follows the national pattern. 74.16% of voluntary awards had been confirmed by the end of 1840, and 119 of the 120 awards were complete by the end of 1844⁽³⁾. Completion of compulsory awards spanned a longer period of time. The tithe commissioners wished to get the bulk of voluntary commutations out of the way before they embarked on compulsory procedures; and they issued a directive postponing the commencement of compulsory work from 1 October 1838 to a later date when the voluntary agreements would have been completed⁽⁴⁾. Nationally, 70.25% of compulsory commutations were effected between 1840 and 1846. Staffordshire lagged behind a little. In the same period only 56.46% of Staffordshire awards were confirmed, and only 13 of the 148 between 1840 and 1843. The period of greatest activity was 1844-1849 when 119 (92.97%) of the compulsory awards were confirmed. There was a reason for the slower rate of progress. The county had an unusually high proportion of tithe districts in

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1. 'Tithe Commissioners' Instructions in Carrying Out Compulsory Commutation'. S.R.O.: D593/T/10/27.
 2. See below, Appendix VIII.
 3. Appendix IX.
 4. S.R.O.: D593/T/10/27.

which, because of the small sums to be apportioned, the parties felt no urgency in the matter. The tithe commissioners also showed themselves understandably more anxious to commute the tithes in districts where the tithes were valuable and in which there was some dispute or lack of conclusive evidence which had precluded voluntary agreement. Some of the very last commutations were of districts in which the tithes were of minimal value, but in which, none the less, an award was necessary. The commissioners were obliged to make an award and apportionment of tithe in every district, or furnish reasons why no award was necessary. They listed in their Reports to Parliament in 1849 and 1851 which types of commutation remained outstanding⁽¹⁾, and showed particular concern about those districts where only a small amount of tithe had to be apportioned but in which a full map was necessary. As this meant a disproportionate expense for the parties concerned, it is hardly surprising that they dragged their feet. In Rushton Spencer (Staffs) only £2.10.0 of rent charge had to be apportioned, the remainder of the tithe being in the hands of the respective owners. A full award and apportionment was made out, but it was not completed until 1852⁽²⁾. Another problem for the commissioners was the apparent lack of interest of many landowners in obtaining Declarations of Merger. Administratively, it was much easier to declare a district free of tithe because all tithes had been merged

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1. Parl. Papers (H.C.) 1849 Vol. XXII, pp.549-550 and 1851 Vol. XXII, p. 549.
 2. P.R.O.: I.R.29/32/184.

in land than to make maps and apportion unredeemed tithe on land-owners who would never be called upon to make payments. Whenever possible, therefore, the commissioners delayed until as many mergers had been enrolled as was practicable before commuting the tithe which remained. This procedure caused delays in Staffordshire where, as has been seen, much tithe was already in the hands of the individual landowners⁽¹⁾. Most of the huge parish of Leek was in this situation and as a consequence tithe commutation was much delayed. Over the entire parish only £5.2.6 of tithe rent charge was eventually apportioned, but the mergers which exonerated the remainder took a long time to be enrolled. No commutation in the parish was effected until 1845 and six of the districts had to wait until between 1851 and 1853. In Leek and Lowe district, assistant commissioner Charles Pym had begun work on commutation in 1845 but had to wait until 1851 for the declarations of merger from all the 53 landowners in the parish⁽²⁾.

By contrast, when voluntary commutation was in prospect, some landowners were very quick off the mark. In Whittington, near Lichfield, a meeting of land and tithe owners was held on 18 October 1836 at which the average value of the tithes between 1829 and 1835 was produced. The landowners immediately agreed to accept this sum as a rent charge and an award was drawn up early in 1837⁽³⁾. An attempt by one landowner to obtain a deduction on account of the

1. Chapter II, pp. 28-31.
 2. P.R.O.: I.R.18/9418.
 3. S.R.O.: D1851/4/30.

low rate of parochial payments made by the tithe lessees during the years of average was quickly put down by a curt note from one of the lessees stating that if any such proposal were carried:

'We shall not hold ourselves bound to take the seven year average on our future corn Rent, but should call in one of the Commissioners under the Act, who no doubt would give us an additional 20 per cent on that Rent.'

The dual threat of compulsory commutation and a 20% rise in rent charge persuaded the landowners that they already had the best bargain they were likely to get, and no more was heard of the proposal. The report of the assistant commissioner, who was required under the Tithe Act to scrutinize all voluntary agreements for signs of unfairness or collusion, declared that the agreement appeared to be fair, or at least not disadvantageous to the tithe owners. Thomas Sudworth cynically noted:

'The great tithes of Whittington being now under Lease to the representatives of the late Mary Woods, I presume that they (not having much land in the Parish) will have made the best bargain they could with the landowners.'⁽¹⁾

In Drayton Bassett, also, voluntary agreement was reached within three or four months of the passing of the 1836 Act. The rector, Dr William Lally, accepted the extensive moduses over almost half his parish and an agreement, based on a survey made in 1807, was confirmed early in 1837⁽²⁾. In both Whittington and Drayton Bassett

1. P.R.O.: I.R.18/9545.

2. P.R.O.: I.R.18/9338 and 29/32/83.

early agreement was greatly facilitated by the fact that there were a few large landowners able to negotiate terms. In Drayton Bassett Sir Robert Peel owned about 970 of the 1250 tithable acres in the parish and Sir Francis Lawley owned a further 254. Clearly, if these two were in agreement there was no need for further consultation among the remaining landowners. It is significant that Peel also held a large interest as landowner in Whittington. Evidently, his agents were attempting to put into practice his Commons arguments on the scope for quick and easy voluntary agreement. It should be noted also that in each of these early agreements the tithe rights were unequivocally known. In Whittington the great tithes were owned by the Prebendary of Whittington who leased them out, while the small tithes were in the hands of the perpetual curate as incumbent. In Drayton Bassett all tithes were held by the rector. The fewer the numbers involved in decisive negotiations, the more likely was early agreement.

There were also, of course, early attempts at commutation which were unsuccessful. The landowners of Codsall were anxious to reach an agreement in the autumn of 1836 and asked the Duke of Sutherland's agent, George Lewis, to provide records of the average value of his tithes between 1829 and 1835. Lewis found on arrival in Codsall, however, that several of the proprietors were "more disposed to put selfish questions than enter upon general business"⁽¹⁾. Lewis had already formed a poor opinion of the Codsall tithe payers⁽²⁾,

1. Lewis to Loch, 24 October 1836: S.R.O.: D593/K/1/3/24.
 2. See above, Chapter II, p. 30.

and there was obviously little of the mutual trust necessary to effect a voluntary commutation. He refused to let the proprietors see the averages and told James Loch that he believed the Duke's interest could not be safeguarded without the intervention of an assistant commissioner⁽¹⁾. There was a further complication in that some of the tithes had been recently purchased by the respective landowners and a suspicion was current that the Duke's averages might have been unfairly bolstered by the inclusion of certain tithes no longer owned by him⁽²⁾. The legal situation arising from the now fragmented tithe ownership would have to be clarified before any agreements were confirmed. Negotiations dragged on. An assistant commissioner was called in, but he found matters no easier, and the Codsall apportionment was not finally confirmed until March 1849 - twelve and a half years after the first discussions had been held⁽³⁾.

II

Voluntary agreements to commute tithes were usually obtained without the intervention of an assistant commissioner. Negotiations usually took place around the evidence provided by the seven year averages, although there was no legal obligation for voluntary awards to be tied to these averages⁽⁴⁾. Thus, in Caverswall, the tithe

1. S.R.O.: D593/K/1/3/24-25. 27 October 1836.

2. S.R.O.: D593/T/2/19. Fenton to Lewis 23 October 1836.

3. P.R.O.: I.R.29/32/69.

4. The 'seven year average' was incorporated in the Act in the section dealing with compulsory commutation. The tithe commissioners only had to be satisfied that a voluntary agreement was fair before confirming it. (cl. 17 & 18).

payers and their vicar quickly agreed upon an appropriate sum although the seven year averages were not available, the previous vicar having recently died⁽¹⁾. When General Dyott wrote to the commissioners querying the manner in which the rent charge at Fulfen, near Streethay, was determined, he was informed by the assistant secretary:

'Under a Voluntary Agreement it is of course for the parties to work out the terms of their own arrangements in their own way, free from controul or interference on the part of the Commers.'⁽²⁾

Agreement had to be reached between not less than two thirds of the landowners and two thirds of the tithe owners according to value. The Staffordshire assistant commissioners, in making their reports on the fairness of agreements, were asked to state both the number and the value of property of the landowners who signed the agreements. It is, therefore, possible to assess how many landowners were active in assenting to tithe agreements. It seems clear that, in the main, attendance and negotiation at tithe commutation was dominated by the more substantial proprietors and their appointed agents. At High Offley only 14 of the 45 landowners signed the agreement, although they owned between them more than 70% of the land⁽³⁾. At Caverswall, 42 out of 91 landowners signed⁽⁴⁾

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1. P.R.O.: I.R.29/32/57 and I.R.18/9302.
 2. E Bethune to General Dyott, 30 September 1837: S.R.O.: D661/8/5/1/2-3.
 3. P.R.O.: I.R.18/9455.
 4. P.R.O.: I.R.18/9302.

and at Chebsey 8 of 14⁽¹⁾. At Darlaston, slightly under one third of the landowners signified their assent. A representative of one landowner who had not signed told assistant commissioner W S Merryweather in December 1839 that a large number of landowners were not happy with the agreement and had refused to sign it. He alleged that the rector:

'continually went about soliciting parties to sign the agreement and he, with great exertions, did not obtain a sufficient amount of interest of landowners until within 6 or 7 days of the expiration of the 6 months allowed for a provisional agreement.'⁽²⁾

Presumably on the basis of this warning the tithe commissioners took the rather unusual step of asking for a second report on the agreement. Confirmation, however, was not long delayed when John Pickering reported both that the compositions had been paid to the rector "with great good feeling" and that the agreement, which raised these compositions very slightly, would represent a great prospective benefit to the church.

The decisions made were generally the decisions of the larger owners. It is, of course, hardly surprising that this should have been so. It was still expected in rural communities that smaller interests should defer to greater; or, perhaps more accurately, that smaller interests should trust the greater to act for them when

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1. Ibid. P.R.O.: I.R.18/9310. These are random examples. A glance through the commissioners' reports on voluntary agreements in the Tithe Files will confirm the trend.
 2. P.R.O.: I.R.18/9333.

decisions affecting the village community were taken. In this respect, the dominant interests at tithe commutation were the same as those at enclosure. In the matter of tithe commutation there was usually no great divide of interest between smaller and larger proprietors, and the appointment of valuers to apportion the tithe over the whole district was an effective enough bar to any attempt to saddle any individual or group with more than its fair share of the total. The dominance of the larger proprietors, although not deliberately sinister, could on occasion have unfortunate consequences. At Uttoxeter, a thriving market town, only those householders who held land in the parish were invited to sign the voluntary agreement to commute tithes, although all householders were liable under it to small payments for personal tithes and easter offerings. Before commutation the vicar had collected no tithes from the 500 or so cottages although he knew that payments were due. The tithe apportioners, Joseph Bennett of Tutbury and Thomas Turnor of Abbots Bromley, included small payments from each of these as part of the general rise in rent charge from £140 to £200 agreed by the proprietors. The vicar himself protested at this imposition placed on the poorer members of his parish; but when he appealed against the apportionment in 1844, he was informed by assistant commissioner Charles Howard that the apportionment had been properly made and that no alteration could be permitted unless the larger proprietors all agreed to accept an increased assessment on their own lands. Not surprisingly, the larger proprietors were unwilling to saddle themselves with an increased burden. The vicar's appeal was overruled, and the Uttoxeter poor had good cause to resent an agreement

which was made without their consultation or approval. Most of them were paying tithe for the first time, and collectively they provided much of the increased income for the vicar⁽¹⁾.

The assistant commissioners reporting on voluntary agreements were asked to make their own assessment of the value of the tithes, and to state whether, on the basis of this and any other relevant information, they would recommend that the agreement should be confirmed. They were particularly concerned to discover whether the provisions of the Act had been adhered to with meetings called in due form and the agreement properly made by the right proportion of land and tithe owners. If all parties appeared satisfied, then the assistant commissioner would report that the agreement should be confirmed even if his estimate of the value of the tithe differed from the sum agreed to be taken. The tithe commissioners appeared to take the view that in most cases the rate at which the tithe had been taken and the agreement which had been made were more reliable pointers to the commutation value than a hurried valuation by an assistant commissioner which might not take account of parochial peculiarities or customs. Thus as Handsworth, the commissioners were prepared to confirm an agreement giving the rector £1391.6.6 even though assistant commissioner Thomas Woolley had valued the tithes at £1766.6.1⁽²⁾. The commissioners were evidently more impressed with Woolley's information that there were no objections to the award and that it had been conducted with fairness than they

1. P.R.O.: I.R.18/9528.

2. P.R.O.: I.R.18/9379.

were by his arithmetic. At Kingsley, John Mee Matthew estimated that the rectorial tithes ought to be worth £233 but an agreement settling them for £200 was confirmed without demur⁽¹⁾.

It does appear, however, that assistant commissioners were particularly alert to scrutinize agreements which might be to the detriment of the church. It seems to have been felt that lay impropriators were well able to negotiate their own agreements but that the rights of incumbents had to be specially safeguarded. George Ashdown in scrutinizing the agreement to give £60.5.0 to Lord Wrottesley in lieu of tithe in Bilbrooke noted that his estimate gave a rather higher figure; but as the tithes were in lay hands he did not think it necessary to request further enquiry or evidence:

'If these tithes were Ecclesiastical rather than lay I should not recommend this agreement to be confirmed until there is further enquiry as to the averages.'⁽²⁾

Jelinger Symons, reporting on the voluntary agreement at Farewell, said that the averages, which formed the basis of the rent charge, were very low. He explained why he did not consider it necessary to recommend the rejection of the agreement: The parties:

'went on the assumption that the Averages (settled a very long time ago) ought not to be altered. The Lay Impropiator must, however, have a perfect knowledge of his own interest: but the Rent Charge is decidedly too low. I apprehend that

1. P.R.O.: I.R.18/9411 and 29/32/131.
2. P.R.O.: I.R.18/9258.

an addition would be acceded to if recommended by the board;

As, however, there is no ecclesiastical interest at stake and

the Tithe Owner is quite aware of the value of the land, I

don't recommend a compulsory alteration of the agreement.'⁽¹⁾

By contrast, R B Phillipson warmly applauded the liberality of the Walsall landowners in agreeing to raise the vicar's rent charge far above the level which they had reached before commutation. Seven year averages were far from his mind when he reported in 1839

'I beg to say that I entertain a strong opinion that this is

the best commutation of vicarial tithes that has fallen under

my notice so far as the interest of the benefice is concerned.'⁽²⁾

One of the very rare instances of an assistant commissioner's advising non-confirmation of an agreement occurred when rectorial tithes were to be stabilized at a very low level. By a long-standing agreement the previous rector of Elford had taken £13.12.10 as a composition from the eighty one acres which remained tithable after enclosure. Phillipson objected to perpetuating this composition as a base for the rent charge:

'I do not consider the agreement a fair one, in the first

place because the rates have not been added to the average

receipts ... and ... because I do not consider the sum agreed

upon as a rent charge will fairly represent the value of the

Tithe. It only reaches 3/3 per acre on 76 acres, 5 acres

being covered by a modus [of] 10/6 ... Now Thorpe Constantine,

1. P.R.O.: I.R.18/9355.

2. P.R.O.: I.R.18/9530.

4 miles off and very little superior in quality was valued, and I think very low at $5/7\frac{1}{2}$ per acre.

The late Rector was an elderly man, and was content to take the old composition, and the present rector told me he was quite ignorant of the value of the Tithes, having left the matter to Mr. Toovey. [the apportioner] Had the whole parish been tithable, I have no doubt a much larger proportionate composition would have been paid, but this being so small a thing, and the living being so amply endowed with Lands, the Incumbents have scarcely thought it worth looking after.⁽¹⁾

The agreement was returned unconfirmed by the tithe commissioners⁽²⁾ and was not confirmed until £2.10.0 had been added to the original sum for rates and this new sum was increased by 20%. The new rector, Rev Francis Paget, finally received £30.1.10 for the 81 acres which had been so indifferently collected for most of the seventy years since the Elford enclosure⁽³⁾.

The tithe commissioners, therefore, seem to have seen it as their duty to protect the interests of the church. They believed that lay impropiators and land owners would have a good appreciation of their own interests whereas an incumbent might regard his living merely as a temporary charge, and be disinclined to upset arrangements which suited him personally. Moreover, if he were new to the

1. P.R.O.: I.R.18/9346.

2. They repeated the arguments of Phillipson against confirmation of the agreement. See Tithe Commissioners to Thomas Hodgson, 22 June 1840, S.R.O.: D1851/4/7.

3. P.R.O.: I.R.29/32/88.

living, he might not know what his true rights were. At all events, the evidence from Staffordshire suggests that although the commissioners sought to put into practice the principles of the 1836 legislation, they tried to ensure that these principles did not work against the ecclesiastical interest.

The assistant commissioners' rôle in obtaining voluntary agreements was an advisory and supervisory one. They were available for consultation if needed on points of law and procedure, and the tithe commissioners reserved the right to refuse to confirm any agreement which did not meet an assistant's approval. This right they exercised only rarely. In proceedings under the compulsory clauses of the 1836 Act, however, the assistant commissioners were central figures. In almost all compulsory proceedings, of course, there were difficulties which had prevented the parties from coming to agreement. It was the duty of the assistant commissioner to resolve these difficulties, and then to apportion as rent charge a sum which he considered appropriate. The assistant usually found that some preliminary negotiations had been begun, but these had broken down at various stages. Occasionally, negotiations had reached the stage of a settlement which the commissioners themselves rejected. At Haselour an agreement had been reached in 1841 on the basis that all 600 acres were covered by farm moduses totalling £16⁽¹⁾. Although the two landowners were able to produce receipts for these sums dating from 1721, the commissioners refused to confirm

1. P.R.O.: I.R.18/9385.

the agreement. Assistant commissioner John Rawlinson held meetings to effect compulsory commutation from November 1842 at which the solicitor of the ecclesiastical commissioners, who had recently acquired rights to the tithes previously held by the prebends of Freeford, Hansacre and Armitage, disputed the moduses. As setting aside the moduses would raise the tithable value of the living from £16 to nearly £170, it was hardly surprising that the landowners should defend them, the more so as the appropriators themselves had appeared to acknowledge them a year previously. Rawlinson had to find a solution. At a fourth meeting held in September 1843 he reported:

'At this meeting it was agreed that all the Moduses alleged to be payable should be set aside & that the Rent Charge should be £50 in lieu of all tithes... The arrangement must be regarded as a Compromise & though probably the rentcharge is not half the value of the tithes (assuming them to be payable in kind), I see no reason to doubt but that the arrangement is an equitable one.'

It is hard to understand how this agreement could be called 'equitable'. In law - at least in law before 1836 - either the modus was valid or it was not. If valid, the rent charge was three times too high; if not rather more than three times too low. The commissioner had, however, discharged his function as he saw it. He had negotiated a compromise solution at much less expense to the protagonists than either alternative. A solution on one side or the other would have led to appeals and possibly to law. Neither

party wanted this and the commissioner produced a solution which avoided it. The Tithe Act had been introduced partly to end modus disputes and the costly litigation to which they led. This award, although arrived at neither on the basis of the averages nor of what the tithe would be worth if collected in kind, was within the spirit of the Tithe Act and would win the approval of the commissioners. Above all else, it worked. In the nature of things, the tithe commissioners had to look on occasion for Benthamite solutions. Because they were prepared to do this, and thus cut through the tortuosities of the law courts, they removed much of the sting from commutation, and rendered the process relatively, though not absolutely, painless.

The resolution of modus disputes provided the Staffordshire assistant commissioners with much of their work. They provided one of the commonest reasons for failing to obtain voluntary agreement. Assistant commissioner George Wingrove Cooke was faced with this problem in attempting to engineer commutation in the Ellastone tithe districts of Prestwood and Ramshorn. When Cooke arrived to take charge of proceedings in Ramshorn in July 1844 he discovered that the vicar had asked the landowners for a rent charge of £90 which the landowners, being prepared to pay only £50 and claiming moduses, rejected⁽¹⁾. No averages could be obtained. Cooke suggested that both sides should agree to accept the decision of a valuer to be appointed by themselves. The vicar was not satisfied when in February 1846, the valuer assessed the tithe as worth £60, but on

1. P.R.O.: I.R.18/9472.

hearing Cooke's opinion that no further increase was feasible, he reluctantly agreed to accept it.

In Prestwood, the landowners claimed numerous small moduses unacceptable to the vicar, although they had appeared in the Ellastone terriers for over two hundred years⁽¹⁾. Cooke pointed out to the landowners that the moduses would be extremely difficult to prove in a court of law, and that any such attempt would be costly. As the seven year averages were very low for 413 acres of good quality land, he suggested that the landowners might prefer to permit a 20% increase in the averages to a lengthy legal wrangle. It is not clear whether the vicar would have been prepared to institute such a battle for the sake of a few pounds, but the landowners raised their offer from £22 to £30. When the vicar requested £31.10.0 the commissioner stepped in and awarded the awkward compromise sum of £30.17.6⁽²⁾.

At Abbots Bromley, the tithe commissioners were called on in 1846 to make an award which would have been made voluntarily had not the bishop refused to sign an agreement giving the vicar £65. It proved to be a costly decision for the clerical interest. The landowners had been prepared to make an increase in the averages on account of the previous vicar's neglect in collecting turnip tithes and assistant commissioner Richard Phillipson urged in May 1844 that the agreement should be signed. He had been unable to compute the vicarial tithe at higher than £48.19.0 and concluded:

1. P.R.O.: I.R.18/9470.
2. P.R.O.: I.R.29/32/177.

'I do not think the Vicar could make better terms.'⁽¹⁾

The generosity of the tithe payers quickly disappeared when they realized that they would be involved in extra controversy and expense because of the decision of the episcopal office to try to get more for the vicar. The landowners' case in law and precedent was strong. Most of the parish was covered by moduses in lieu of vicarial tithes and an important attempt to break them by Joseph Delves in 1787 had been defeated at Stafford Assizes⁽²⁾. The landowners also made play of the fact that the seven year averages amounted only to just over £37. Errors were pointed out in assistant commissioner Rawlinson's valuation which would have awarded £66, and the landowners stuck at £50. They threatened that if this sum were not accepted:

'They shall call for an award of Rent Charge to themselves in lieu of Turnips and Agistment, or that, if so advised, they will set up a claim of exemption and demand an issue upon the strength of the Vicar's own valuation of Agistment.'

The vicar, unwilling to call the landowners' bluff, finally accepted the offer. The vicar's rent charge had been reduced by £15 from the level which the bishop's office thought could be bettered.

A not infrequent method of resolving modus disputes before compulsory commutation took place was by a special meeting before an assistant commissioner under the provisions of clause 45 of the 1836 Act. The commissioner was empowered to hear evidence from both

1. P.R.O.: I.R.18/9232.

2. S.R.O.: D1721/3/239. See above Chapter IV, pp. 131-132.

sides and to make a decision on the validity or otherwise of the moduses claimed. At Swynnerton, the first meeting was held, under the provisions of the 45th clause on 14 February 1842 before George Cooke when the landowners claimed moduses in lieu of all tithes of milk, calves, colts and gardens, together with specific farm moduses⁽¹⁾. In addition they stated that, Swynnerton being part of the Pirehill Hundred, no wood tithe was payable. Each of these contentions was supported by an impressive quantity of relevant evidence, including legal decisions, the Henrician ecclesiastical survey and terriers from 1701 onwards. In addition, many witnesses of long experience in the parish were prepared to swear that each of the moduses had been taken and accepted by every incumbent in living memory until the present rector. The moduses were all proved to the satisfaction of the commissioner and the rector evidently did not think it worth his while to take the matter further. He was, however, reluctant to provide his averages and consideration of the commutation was delayed until December 1844.

In the townships of Clayton and Seabridge, the landowners set up moduses in lieu of cows and calves and garden produce which were contested by the rector of Stoke on Trent, a parish much troubled by tithe disputes and general acrimony since the 1820's⁽²⁾. Once again, an impressive array of evidence was presented before commissioner John Mee Matthew, including the voluminous papers of the recent Chancery suit Tomlinson v. Forrester to decide the cow

1. P.R.O.: I.R.18/9511.

2. P.R.O.: I.R.18/9487.

and calf modus. The rector for his part produced evidence of agreements made in defiance of the moduses and a terrier of 1732 which cast doubt on the hay modus. The assistant commissioner concluded from this welter of evidence that the landowners had proved the moduses for cows, calves and hay, but had failed to establish customs in lieu of garden tithes. The commutation, which was not finalized until 1849, proceeded on these conclusions. Recent court decisions were also brought as evidence in the Barlaston tithe commutation when William Oliver tried, against his solicitor's advice, to recoup some of the points he had lost in Chancery when trying to break the parishioners' moduses⁽¹⁾. In June 1847, George Cooke considered the evidence and decided to uphold the Chancery decision regarding it "as of higher authority and entitled to greater weight" than the Exchequer ruling of 1839 which had given Oliver hope of breaking all the moduses. At Kings Bromley the conclusion of a voluntary agreement was hindered by a dispute over certain moduses between the landowners and the ecclesiastical commissioners as appropriators. In 1844 the tithe commissioners informed the parties that no voluntary agreement could be concluded if there were unresolved differences over moduses⁽²⁾. In June 1848, when the first meeting to effect compulsory commutation was held, the appropriators' solicitor immediately accepted most of the

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1. For details of the case see above, Chapter IV, pp. 139-146. The tithe file is P.R.O.: I.R.18/9249. Also see the letters of the Duke of Sutherland's solicitor, Robert Fenton, on the progress of the Barlaston commutation: S.R.O.: D593/T/10/1.
 2. S.R.O.: D1851/4/15. Meetings to achieve a voluntary agreement had been in progress since March 1838.

moduses, leaving the remainder to be dealt with under section 45 of the Tithe Act⁽¹⁾. In February 1849 George Cooke upheld a modus of 7/- in lieu of all tithes from the 225 acre Haunch estate and a modus of 3/4 covering all tithes on the Tuppenhurst estate which covered 189 acres.

There were obvious advantages in the procedure laid down under the Tithe Act. It was swift, although it enabled all of the evidence brought to the courts of law to be laid before the commissioner. It was relatively cheap. Many an envious litigant must have wished that such a cheap, yet reputable, solution to tithe disputes had been available previously. Once finally decided, the modus, if upheld, was included in the preamble to the tithe award which would do much to establish it firmly and irreversibly. If either party felt aggrieved with the commissioner's decision recourse to the established courts remained available. No such appeal appears to have been made in Staffordshire, modus decisions being quickly regarded as definitive. Those involved in tithe commutation mostly developed a respect for the procedures established under the 1836 Act and were prepared to work within them. It appears that throughout the country the assistant commissioners' decisions were for the most part quietly received. Mr R F Graham, a solicitor from Newbury (Berks), giving evidence to the Parliamentary Select Committee on the Expediency of Inclosure and Improvement of Commons in 1844, said that the authority of the tithe commission provided

'a kind of arbitration which I think has been satisfactory to

1. P.R.O.: I.R.18/9410.

the people generally.'⁽¹⁾

and that

'so far as the proceedings of the Tithe Commissioners have hitherto gone, I am surprised at the submission made to their Awards and the way in which disputes have been arranged.'

Rev Richard Jones, one of the three tithe commissioners, not unnaturally, endorsed this view and saw great merit in the assistant commissioners' bringing "justice to the door". He also argued that his assistants' decisions were widely acceptable, noting that one of them, John Herbert, had so far made 148 decisions in cases of doubtful tithe rights, and that only 10 appeals had been made against his decisions⁽²⁾.

There was certainly no national outcry against the Tithe Act and its operation. The radical critics were silenced and inevitable discontent in certain instances remained isolated and nationally insignificant. The tithe commissioners were able to report to Parliament each year - perhaps a little complacently - that the work of obtaining and apportioning rent charges was proceeding quietly. That such widespread redistribution of a most contentious property aroused so little passion was in itself a tribute to the way in which the commissioners and their assistants were working. But it was more than this. Commutation could not have succeeded without a considerable degree of goodwill on both sides. The Tithe Act created a situation in which both interests were determined to

1. P.Ps (H.O.) 1844 Vol. V, clause 4282.
2. P.Ps (H.C.) 1844 Vol. V, clause 23.

make its provisions work. Given this attitude, the air of administrative confidence which the commissioners displayed was sufficient to make a remarkable success of an operation which had seemed fraught with hazard.

III

After the agreement or decision on a sum to be apportioned in each district as rent charge the work of apportionment began. It was usual for the decision to appoint a tithe valuer to be delayed until the necessary preliminaries were complete. The valuer and apportioner was appointed by the landowners only, the payment of apportionment expenses being their sole responsibility (Tithe Act clause 75). The financial responsibility of tithe owners extended only as far as obtaining an overall rent charge. Normally only one valuer was appointed, but provision was made in the Act for a dual responsibility which was on occasion exercised. In Abbots Bromley, for example, the joint apportioners were Thomas Turnor of Abbots Bromley and James Blair of Uttoxeter⁽¹⁾. It was usual to appoint as valuers men of local experience and knowledge, often permanently employed as land stewards or surveyors. The task of apportionment was generally facilitated by knowledge of the area, and the tithe commissioners in any case wished to ensure that there were no wide discrepancies between rent charges apportioned on similar pieces of land in adjoining districts or parishes. It was

1. P.R.O.: I.R.29/32/1.

usual also to appoint valuers to apportion the tithe in different districts of the same parish. Thus Joseph Bennett of Tutbury in East Staffordshire was appointed apportioner in all five districts of the adjoining parish of Burton-on-Trent and all six in Hanbury. Joseph Naden of Shenstone apportioned all the Lichfield tithe awards and Liddle Elliot of Newcastle-under-Lyme officiated in all the Trentham apportionments. It was standard procedure for potential valuers to be approached and asked what their terms would be before the meeting of landowners was called to make an appointment. At Barlaston, Robert Thompson of Walton, near Stone, was in a peculiarly favourable position as he had valued the tithes shortly before commutation proceedings began. He stated his terms in a letter to the landowners of January 1849:

'I ... Beg to inform you that my offer to apportion the Tithe Rentcharge ... including three copies of the Map of the Parish on a scale of 6 chains to 1 Inch will amount to 6d. per acre. When engaged in the valuation of Tithes in former years, I arranged my papers and maps with a view of making the apportionment and can therefore undertake it at a low rate.'⁽¹⁾

It was not unusual for apportioners to be given specific instructions before beginning their work. The Barlaston meeting resolved after appointing Thompson

'That it be an instruction to the apportioner to apportion on the Lands liable to Tithe Hay and containing 690 acres in

1. S.R.O.: D593/K/3/7/19 Robert Thompson to William Steward, 15 January 1849.

respect of the Tithes of Hay thereof such a sum as the same lands produced for tithe hay on an average of 5 years calculated by the valuations already made by Mr. Thompson.'⁽¹⁾

When engaged to apportion the St Mary Lichfield rent charge, Joseph Naden had to take account of the following resolutions:

'The said Apportioner shall not award any premises liable to the said Rent Charge on less sum than sixpence.

Buildings not liable to yield Tithes of Pigs or Poultry shall not be charged with any portion of the Rent Charge.'⁽²⁾

A correspondent to Robert Fenton in March 1842 sought to indicate to the Duke of Sutherland's solicitor a means whereby dispute might be averted:

'If the Apportioners should be appointed at the meeting on Tuesday it will be better that the Landowners should instruct them how they are to act with respect to apportioning the tithes on Pasture Lands. It has been a vexatious question at some of the parishes adjoining and would be much better decided by the Landowners prior to the Apportionment.'⁽³⁾

It was perfectly legitimate for landowners to instruct the tithe valuers in this fashion. It was a useful way of embodying the landowners' wishes without lessening the tithe owners' rent charge. The usual purpose of such instruction was to enable landowners to be burdened with rent charge in roughly the same proportions as

1. Ibid. Minutes of a Meeting held to appoint an Apportioner.
2. S.R.O.: D1851/4/17.
3. S.R.O.: D593/T/10/13 Henry Beckett to Robert Fenton, 31 March 1842.

previously, and not to create rent charge payments for proprietors who had not before paid tithe. There was the recourse of the apportionment appeal meeting held before an assistant commissioner to remedy any inequalities arising or any attempt to overburden particular interests.

The work of tithe apportionment in the 1840's must have been a lucrative addition to many a surveyor or agent's income. It was probably not enough to keep such a man fully occupied during the period; but there were many tithe valuers who worked on several apportionments often simultaneously. Joseph Bennett worked on 23 apportionments in Staffordshire, Samuel Ginders of Ingestre on 18, Thomas Turnor on 17, and Robert Thompson, James Wyley of High Onn, and James Harding of Rosliston (Derbys) each on 13.

Many assistant commissioners must have been working at full stretch to keep up with the pressure of business. They required a knowledge of the law to exercise their quasi-judicial functions delegated to them under the Act. Three of the most prominent assistant commissioners in Staffordshire, George W Cooke, John Job Rawlinson and John Mee Matthew, were each described as 'Barrister at Law'. Like the apportioners, most of them officiated in numerous awards. The busiest commissioners in Staffordshire were Charles Pym who supervised 55 commutations, George Cooke, 37 and John Rawlinson 31. In addition there was the important work of reporting on voluntary agreements and recommending confirmation to the London office. Of course, certain tithe districts in the same parish could be dealt with at the same time; but the sheer bulk of work must have necessitated many assistant commissioners putting aside all other

employment during the 1840's. Unlike their enclosure counterparts, assistant commissioners were appointed centrally, and not by the parties directly involved. They formed an essential part of the bureaucracy of commutation, applying standardized regulations handed down from the Tithe Office rather than carrying out the provisions of a private Act of Parliament which itself bore the imprint of the wishes of the leading parochial interests. The assistant commissioners quickly developed into a professional and efficient corps, competent to deal with a wide variety of problems in an increasingly practised fashion. Certainly, they made mistakes. The construction of a tithe award was a highly complex business, and it was hardly surprising that small errors, such as the omission of a previously accepted modus in the preamble to an award, crept in⁽¹⁾. Usually the aggrieved parties were not slow to point out such lapses. Compared with the work of collation and synthesis of a district's tithing history which commissioners often had to attempt before completing their work, however, such mistakes were relatively minor. They did not appear to shake the commissioners' credibility. Their decisions did not, however, always go unquestioned. Their awards were subject to award appeals, and these,

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1. See for example the award appeal meeting for Upper Elkstone, Alstonefield in June 1848: P.R.O.: I.R.18/9348. See also, E A Cox and B R Dittmer: *The Tithe Files of the Mid-Nineteenth Century*, Agric. H.R. 1965, pp. 1-16 and H R Prince: *The Tithe Surveys of the Mid-Nineteenth Century*, Agric. H.R. 1959, pp. 14-26 on the accuracy of the Awards and their liability to error. The authors are concerned mainly with the tithe files and surveys as sources for historical geographers.

although by no means so common as apportionment appeals, were not rare in Staffordshire. In some instances an award appeal was quickly withdrawn when the parties concerned were shown on what criteria the commissioners had acted. At Tipton where Charles Pym had awarded £287.9.7 to the Canon in lieu of all tithes, the landowners called an appeal meeting in July 1846, thinking this sum too high. When they understood that the commissioner had taken note of the fact that the tithable produce had been steadily decreasing during the years of average due to the increase of mines and other industrial projects, and that he had made suitable deductions from the rent charge to cover this, they withdrew their objections⁽¹⁾. Of more importance were errors which appeared in awards because of the complexities of tithe ownership in a particular district. In constructing the St Chad Lichfield award in 1848, John Rawlinson observed that

'Great difficulties have arisen in distinguishing the sums payable to each Lessee ... and the completion of this my award has been thereby impeded.'⁽²⁾

This was hardly surprising as the tithe ownership was divided between the Dean & Chapter of Lichfield, the vicar of St Chad and eight prebendaries whose precise rights remained unclear. This uncertainty was made the ground of an appeal by the landowners against Rawlinson's award of £600 for the whole parish. He reported:

'They said they were willing to acquiesce in a rent charge of

1. P.R.O.: I.R.18/9520.

2. P.R.O.: I.R.29/32/139.

£570. Under all the circumstances of tithe free land being intermixed with land subject to tithes & the tithing extending over small districts only, I thought the calculation which I had made at the Award Meeting ... might be a little too high and I have reduced it to £570.⁽¹⁾

At Butterton in 1847 Rawlinson awarded Thomas Carr, the impropiator, on the basis of his seven year receipts, a rent charge of £12 in lieu of the tithes of a district which was nearly all moorland. The impropiator, however, appealed against the award at a meeting held on 20 July 1847, complaining that rates had not been included in the rent charge, and that it should therefore be increased to £15⁽²⁾. The landowners complained that this would be unfair as the land had become progressively less valuable since the hard ploughing following enclosure, which had resulted in soil exhaustion. They argued that corn could no longer be grown on more than 50 acres in the entire district, and that the tithe could not be worth more than £6 annually. The assistant commissioner took the opposite view that hard ploughing had now had its worst effect and therefore the seven year averages were not unduly high. He upheld Carr's appeal and raised the rent charge to £15.

Matters such as these were generally decided on the judgment of the assistant commissioner. When errors of a factual nature, for example about the precise limits of a tithe owner's jurisdiction, or the extent of a modus, were shown to the tithe commissioners

1. P.R.O.: I.R.18/9303.
2. P.R.O.: I.R.18/9291.

they had to be corrected. If they were pointed out after the commutation had been confirmed then it was necessary for a new award to be made, known as a Supplementary Award. In Staffordshire these were fairly rare, numbering no more than a dozen, and they were most likely to be necessary in areas where there were complexities of tithe ownership. Often they arose as the result of an oversight. Small sums of £2 at Caverswall⁽¹⁾ and 4/- at Mavesyn Ridware⁽²⁾ were not included in the original awards and had to be corrected. At Fauld an agreement was signed in 1837 giving the lessee of the Bishop of Lichfield £40 as a rent charge in lieu of appropriate tithes⁽³⁾. This sum was apparently agreed on because the lessee believed that the predominant farm in the district would be converted from grass to profitable arable cultivation. When this did not occur, the landowners requested a reduction and demanded to see the receipts upon which the original rent charge should have been fixed. Finally in January 1848 a Supplementary Award meeting was held under John Rawlinson at which the bishop's agent agreed to reduce the rent charge to £26.10.0. This the lessee reluctantly agreed, although, in Rawlinson's words:

'extremely vexed and mortified now at being obliged to content himself with less than the landowners had agreed to give.'⁽⁴⁾

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1. P.R.O.: I.R.29/32/57. The rector of Bucknall was entitled to half of the corn tithes of a small district while the impropriator owned all the remaining tithes.
 2. P.R.O.: I.R.29/32/150. The trustees of George Chadwick owned the hay tithes of 3/4 acre of Lord Leigh's land.
 3. P.R.O.: I.R.29/32/94.
 4. P.R.O.: I.R.18/9357.

Fauld thus provided the only Staffordshire instance of a previously agreed rent charge being lowered by a Supplementary Award. In instances when exemptions were proved, the rent charge remained the same. At Bucknall and Bagnall, although the acreage exempted from tithe following the 1808 Horton enclosure Act was found to be 210 rather than 25 as originally stated, no reduction was made in the total rent charge of £530⁽¹⁾. The apportioner would have to redistribute the rent charge among the other proprietors.

The Staffordshire evidence suggests that what discontent there was over the operation of the Tithe Act was directed primarily at the work of the tithe valuers or apportioners. Apportionment appeals were in general much more numerous, lengthy and contentious than award appeal meetings. On one level, this was hardly the apportioner's fault. It was to be expected that many objections would be raised by landowners when they saw for the first time in black and white how much their own estates would contribute to the total rent charge, and this they would not know until after the apportionment was complete. There was, however, another factor - the standard of competence of the valuers. There is some evidence to suggest that on many occasions it was not only the landowners who objected to the valuers' work. There were frequent complaints both on the inaccuracies which crept in, and the length of time taken to produce a valuation. The original decision of the tithe commissioners to postpone embarking on compulsory awards was taken partly because of

1. P.R.O.: I.R.29/32/43.

delays in producing valuations;⁽¹⁾ and in their 1840 report to Parliament, they noted an acceleration in both agreements and apportionments, although:

'More time is usually consumed by this last process than the six months originally contemplated by the legislature.'⁽²⁾

The commissioners again commented adversely on the slowness of the apportionment process in 1843⁽³⁾. It was a source of continuous concern, contrasting with the generally smooth operation of the rest of the complex machinery.

Perhaps more serious than delay was inaccuracy. One assistant commissioner, Jelinger Symons, stated explicitly in his report on the Bobbington agreement in 1839:

'I have seen too much of the local valuers of land to place much confidence in their decisions, and I would much sooner trust to the statements of the tenants themselves as to the crops they actually realise and which they are but little likely to exaggerate than to the valuations of local land agents, who, however respectable, are likely to err.'⁽⁴⁾

This was not merely a personal view. The tithe commissioners in their 1841 Report complained of frequent errors in maps submitted by valuers. Most of them were unwitting but:

'Maps are sometimes sent here containing errors of which the mappers are aware and the existence of which they attempt to

1. Tithe commissioners instructions, 27 August 1838, S.R.O.: D593/T/10/27.
2. P.Ps. (H.C.) 1840 Vol. XXVIII, pp. 139-43.
3. Ibid. Vol. XXIX, pp. 391-394.
4. P.R.O.: I.R.18/9268.

conceal by tampering and making compensating errors in the field books or original records of admeasurement.⁽¹⁾

The difficulties of obtaining accurate maps and valuations led to the first amendment of the Tithe Act which permitted the tithe commissioners to confirm apportionments without certifying their absolute accuracy⁽²⁾. A distinction was made between apportionments confirmed as before which would receive the official seal of the commissioners under section 64 of the 1836 Act, and which could be referred to as evidence in any future boundary disputes and the like; and maps which were not to receive the commissioners' seal. The decision to instruct a valuer to make a map which would not be submitted to the commissioners was to be taken by at least three quarters of the landowners both in number and value. To cut down the worrying number of appeals, once the apportionment was made no appeal on the grounds of inaccuracy was to be permitted to those who had signed the agreement to have a survey which need not be exhaustively accurate.

Such a provision was, of course, a blow to the commissioners' intention to provide a complete set of totally accurate maps. It has been calculated that only one sixth of the maps deposited with the commissioners were sealed⁽³⁾. True to the prevailing spirit of administrative reform, however, the possible took precedent over the best. Would-be appellants and litigants had to ensure that the

1. P.Ps. (H.C.) 1841, Vol. XII, pp. 141-144.
 2. 7 Wil. IV & 1 Vict. cap. 69. 1837.
 3. Prince, op. cit., p. 23.

tithe map had the commissioners' seal before founding a certain case on its evidence. There was no doubt at all that the concession needed to be made. The Staffordshire evidence suggests that the meeting to discuss or approve the apportionment often brought its rash of eager and sometimes irate appellants.

There were two well attended and stormy meetings in Tatenhill when the apportioner, Joseph Bennett, came under severe attack from the landowners. At the first meeting, in May 1839, Bennett explained the principle of his apportionment, which the landowners believed to be unfair as the township of Tatenhill was alleged to be saddled with larger payments than Callingwood where there was proportionately more grass land. The meeting was adjourned to October when, as assistant commissioner Wolsey reported, many large and small owners attended, "each party ... ready with witnesses to prove their case"⁽¹⁾. Bennett had taken the precaution to bring with him what Wolsey called two or three "first rate men" with a knowledge of the area. The cause of the discontent was not that the total rent charge was higher, thus bringing with it higher assessments for everyone, but that the valuation was upon a different principle to the one under which the old and uncontroversial compositions had been made. Arguing that the district was almost exclusively dairy land, Bennett had rated the pasture and meadow tithe rather higher than usual in relation to the arable. This resulted in many small owners who owned grass land near Tatenhill bearing a higher proportion of the tithe than previously. The previous compositions,

1. P.R.O.: I.R.18/9515.

which seemed to have been based on a thorough knowledge of the parish and the means of its inhabitants, had fixed only a moderate charge on the small owners. There thus developed in Tatenhill one of the rare instances of an open conflict between large and small owners. Wolsey's attitude was equivocal. He sympathized with the small owners and felt that it would have been diplomatic to have burdened the larger proprietors rather more heavily. To set aside the apportionment, however, he needed concrete evidence that the valuer had acted either unfairly or incompetently, and this he was unable to find. Much to Bennett's relief, he confirmed the apportionment, although explaining to the small proprietors that they could appeal to the commissioners against his decision and that if they decided to do so:

'I would give them all the assistance I could.'

The small owners were unwilling, or unable, to take their case further. Such a course of action might prove costly. Only one small change was made in Bennett's apportionment. William Kirk's rent charge of $3/9$ for a $1/4$ acre plot was transferred to some of the larger owners because he was able to show that his smallholding was part of an ancient enclosure and not tithable.

Although the Tatenhill case was atypical in the amount of heat generated by the appeal, it does illustrate a real problem which must often have worked to the detriment of the smaller proprietors. The tithe apportionment was an inflexible instrument. Unless the apportioner had been specifically instructed by the landowners not to apportion tithe on certain lands, he had to apportion the tithe

proportionately, giving consideration to the mode of farming and any customary payments or exemptions. There was, therefore, no room for the type of flexible and moderate composition which had proved successful in Tatenhill before 1836. While it is not suggested that the larger owners deliberately set out to increase the tithe burden on their less prosperous brethren, the tidy machinery of commutation, with its set rules of procedure, must have had this effect in numerous instances. It was the more ~~un~~fortunate in that the consequence seems not to have been fore^eseen. Tithe commutation imposed for the most part an incomparably better assessed, more certainly known and altogether more efficient system on the country. It should not be forgotten, however, that the very inefficiency of the old system permitted arrangements to be made which indirectly benefited the small proprietor, either by positive discrimination in assessing compositions payable or by making the amounts due so small that it was not worthwhile for the tithe owner to discover the exact sums payable and then to collect them. After commutation each plot of land would be burdened with a more or less precisely calculated rent charge, fluctuating only in accordance with known and easily verifiable data. There was less of an excuse for not collecting the small sums which had previously proved so troublesome.

Many apportionment appeals, though on occasion both lengthy and passionate, indicated that the tithe payers did not understand the operation of the Tithe Act. George Cooke found the parishioners of St Michael, Lichfield "generally discontented with the rent charge

and protesting that it was exorbitant"⁽¹⁾. They were not aware, however, that there could be no valid objection to the total rent charge at an apportionment appeal meeting. They had tacitly accepted a large increase in the tithe when the award was made in 1846, and at the award appeal meeting no general objection had been raised. Cooke therefore noted:

'Of course, I had no power to enter into the question. Nothing was stated which led me to suppose that any error had occurred in the computations upon which the rent charge was founded although the rent charge is undoubtedly a high equivalent for the tithes.'

At Longnor, the parishioners finally agreed to a rent charge of £40 to the impropriator, Sir John Crewe, although since 1780 an unvarying composition of £12.10.0 had been accepted. The proprietors delayed their appeal, and did not protest until they realised what the increase meant on each of their lands. Cooke reported in October 1849 that at the apportionment appeal meeting,

'Many landowners attended to object to the amount awarded but their objection was not based upon any suggestion of error in the award and I told them that this part of the Commutation had been concluded.'⁽²⁾

At Norton-in-the-Moors the rent charge of £550 to the rector represented an increase of over £60 on the seven year averages. The tithe apportioner had been instructed to charge all of this on the

1. P.R.O.: I.R.18/9422.
2. P.R.O.: I.R.18/9425.

arable lands in the parish. As the arable portion was less than a third of the total it was hardly surprising that those with much arable land found the increase in the amount they were to contribute a steep one, or that they should appeal against their assessments. The assistant commissioner reported that, although many objections had been raised, none had mentioned the injustice of the instructions given to the apportioner:

'Had it been so, I should certainly have felt it my duty to have directed the apportionment to be made upon another principle.'⁽¹⁾

Virtually the only apportionment appeals which the commissioners would countenance were those which suggested some inequality between the rate at which lands were assessed in comparison with others of similar type and use, and those which alleged errors in the drawing of field boundaries. At the Croxton (Eccleshall) apportionment meeting in December 1841, William Holland complained of the £8.14.0 rent charge laid on his $55\frac{3}{4}$ acre estate⁽²⁾. Assistant commissioner H W Meteyard, however, elicited by careful questioning that the land was productive enough, and that Holland's assessment per acre was not noticeably different from those of his neighbours. His appeal was dismissed. In Cannock, in December 1842, before the same assistant commissioner, however, two apportionment appeals were upheld⁽³⁾. Benjamin Burnett appealed against an assessment of £2.1.0 on land which he said had been valued as arable, but had not

1. P.R.O.: I.R.18/9451.
 2. Ibid. 8531.
 3. Ibid. 9298.

been ploughed for more than thirty years. When the evidence he called proved the point, Meteyard directed that the rent charge should be reduced to £1.12.10. Matthew Willington was able to prove that his land, upon which a rent charge of 17/9 had been placed, was modus land. His rent charge was reduced to a nominal 3d. Such objections could not hope to succeed if they were frivolous as the commissioner had no power at this stage to alter the total rent charge. The other landowners in the district would have to bear a proportionately higher charge if appeals were upheld, and they would be unlikely to subsidize a neighbour who brought forward an unfounded appeal.

Boundary disputes and difficulties were a common source of trouble for apportioners, and appeals were not uncommon. Charles Howard had to direct many corrections to be made to the Darlaston award when appeals were made in October 1842⁽¹⁾ and numerous adjustments were made to the Gnosall apportionment in 1839⁽²⁾. There were, however, incorrect apportionments which were confirmed, as the commissioners themselves had anticipated. In November 1849, over four years after the Beech (Stone) tithe award was confirmed, Samuel Bate wrote to Robert Fenton:

'The Award is very inaccurate. I have been over to Mr. Ford respecting it & arranged for the £40 payable to the Duke to be put upon the greater part of Mr. Lewis' farm & the £7 payable to Mr. Fitzherbert to be put upon one or two of the fields nearest to Swynnerton ...

1. P.R.O.: I.R.18/9333.

2. Ibid. 9370.

However, the award is made and confirmed & as the church is not interested I presume the Commrs. will not care much abt. the accuracy or consistency of the award.⁽¹⁾

Problems arising from the difficult task of apportionment, therefore, were frequently met, and often brought to apportionment appeal meetings. They produced resentment and not infrequently angry meetings of landowners who evidently had not mastered the complexities of the Tithe Act and could not afford to take legal advice on the justice of their claims. It is important to note, however, that such anger and resentment remained localized. There was never any countrywide opposition to tithe commutation. It was for the most part welcomed as a successful rationalization of an absurdly complex system. Nowhere was there opposition on the scale encountered in South and West Wales. The tithe commissioners themselves noted in their 1844 Report that South Wales provided the only exception to the harmonious operation of the Tithe Act⁽²⁾. Tithe became a source of real grievance in Wales and illustrated one major drawback to the operation of the Act - the taking of national corn prices rather than prices at local markets to ascertain the prevailing rent charge. In South Wales, where prices were abnormally low, the effect of the Act was to burden farmers with higher increases than in the rest of the country. The farmers of Pembroke argued that the commissioners found the level of tithes there very low, and frequently used their powers to increase the

1. S.R.O.: D593/T/10/11.

2. P.Ps. (H.C.) 1844 Vol. XXXI, pp. 419-422.

averages by the full 20%. The result was that net tithe payments in some areas were between 20 and 50% higher than before the operation of the Act. Thus, although, as one advocate of the Welsh farmers' case admitted, "the provisions of the Tithe Act have been carried into execution with very great skill, judgment and accuracy"⁽¹⁾ there was much resentment. This resentment coalesced with other factors in Wales - the high proportion of absentee improPRIATORS who took tithes strictly, and the spread of Dissent - to make the tithe question an important factor in the Rebecca Riots of 1842 and 1843, with threatening letters to tithe owners, mock auctions of tithe agents & collectors and riotous assembly⁽²⁾. The Times attempted to use the trouble in Wales to make a general attack on the operations of the tithe commissioners as important agents of centralized bureaucratic administrative reform, which indeed they were:

'The Tithe Commutation Act, though it forms only one among thousands of similar instances that might be produced of modern legislation, has involved, among other things, the substitution of a centralized, uniform and negative machinery ... We are convinced that the general practice of converting everything throughout the country into a level and uniform system with a central commission at its head is one which its oppressive and grievous injustice must sooner or later bring into that

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1. The Times, 11 October 1843. See also other letters on the subject of tithe commutation in Wales, 4-12 October 1843.
 2. D Williams: The Rebecca Riots, 1955. See especially pp. 55, 129-36, 234-5 and 239.

condemnation which its intrinsic perversity and impolicy so richly deserve.⁽¹⁾

Circumstances in Wales were exceptional. Elsewhere, the Times' stricture seems to have fallen on deaf ears. Tithe owners and payers alike, after centuries of uncertainty now welcomed just that "level and uniform system" which the newspaper condemned, as putting arrangements on an altogether more businesslike and rational footing. Furthermore, landowners were often prepared to pay a little extra to achieve it.

IV

Tithe owners in Staffordshire generally did well out of arrangements for tithe commutation. In many tithe districts the rent charge apportioned was greater than the seven year averages which formed a base for tithe commissioners to calculate compulsory commutation. In 151 tithe districts in Staffordshire it has been possible to compare the rent charges apportioned with the officially verified average of receipts for tithe during the period 1829-35. The result is shown in the Table below:

Rent Charge taken at the level of the averages	60	(39.74%)
" " " " 1-10% above " "	50	(33.11%)
" " " " 10-20% above " "	17	(11.26%)
" " " " more than 20% above "	15	(9.93%)
" " " " 1-10% below the "	9	(5.96%)

1. The Times, 29 November 1843.

Thus it may be seen that although nearly 40% of districts settled a rent charge to within £1 of the averages, 54.30% show an increase on the averages and only 5.96% show a decrease. Most of these decreases, moreover, are of relatively trivial amounts. Six of the nine districts show decreases of less than 4%. Usually the reasons for decreasing the rent charge were stated on the tithe file. At Aldridge, the rector believed that the averages were unfairly weighted in his favour in that in the years 1829-34 tithes had been taken at a high valuation which he had reduced by 10% in 1835. Even after this reduction, many occupiers were unable to meet their commitments, and the rector was prepared to accept £1300 from the landowners rather than the strict average which was £1366.9.5 $\frac{3}{4}$ ⁽¹⁾. At Bromley in Eccleshall, a deduction of £3.2.0 was accepted by the Dean and Chapter of Lichfield as the averages had been bolstered by "an excessive and unfair cropping of one of the Farms for some years".⁽²⁾ At Wolverhampton, assistant commissioner Rawlinson noted that the average compositions amounted to £788.9.6 $\frac{1}{2}$. He observed, however, that there were many arrears and

'considering that the highness of the compositions has been the cause of the loss which has accrued from these arrears, I have been led to the conclusion that these arrears are a loss necessarily attendant upon the system of tithing that has been pursued.'⁽³⁾

1. P.R.O.: I.R.18/9233.
 2. Ibid. 9281.
 3. P.R.O.: I.R.18/9550.

He awarded rent charges totalling £730.

It is perhaps more interesting to understand why tithe rent charge so often reflected an increase on the seven year averages. The tithe commissioners had been given power under the Tithe Act to raise or lower the level of the averages by "not more than One Fifth of the Average Value" on application by not less than one half of the land or tithe owners by value that the averages would "not fairly represent the sum which ought to be taken for calculating a permanent Commutation of the Great or Small Tithes" (clause 38)⁽¹⁾. This power was extensively used in Staffordshire. It should be noted also that in almost 10% of the districts noted above rent charges were awarded which represented an increase of more than 20%. In Staffordshire, as in most of the rest of the country, this fact seemed to pass with little comment, although on the face of it such awards seemed to be in defiance of the Act. One of the few references to this was made by Thomas Salt, a banker-lawyer from Shrewsbury,^{who} alleged in evidence to the Select Committee on Enclosure in 1844 that the tithe commissioners abandoned the averages as the basis of assessing tithe rent charge:

'and gave private instructions to their Assistants to allow valuations to include a prima facie case in favour of the party producing them, leaving it to the opposite party to show that the valuation is erroneous or that there has been a change in cultivation in the seven years of average.'⁽²⁾

1. See above, Chapter IX, pp. 347-8.

2. P.Ps. (H.C.) 1844 Vol. V, clause 6501-6530.

As a result, he argued, the commissioners were now flouting the law and permitting increases in excess of 20%.

In making these large increases, the tithe commissioners were flouting the spirit of the law. It is doubtful, however, whether they were breaking the letter. Clause 37 stated that the commissioners were to ascertain the "clear Average Value ... of the Tithes ... according to the Average of Seven Years". This was not quite the same as taking the average receipts as the basis of calculations; and if a tithe owner argued, as he frequently did, that the average receipts did not represent the true value, then the assistant commissioner could award a larger increase. The question fell awkwardly into that twilight land between the responsibilities of legislature and executive. In the sphere of administrative reform of the 1840's it was by no means a unique example.

It should be noted that the restrictions on raising or lowering the rent charge applied to compulsory awards only. Voluntary agreements could be made for any sum, subject only to the confirmation of the commissioners. It was felt that both sides would be sufficiently on top of their affairs to prevent outrageous demands being made, or acceded to, on either side. In Staffordshire, rent charges in excess of 20% above the averages were almost equally divided between voluntary and compulsory awards. Of the fifteen such awards, eight were compulsory and seven voluntary.

The Staffordshire tithe districts where large increases were sanctioned indicate that a real distinction could be made between

the value of the tithe during the years of average - if properly assessed - and the amount received. In such circumstances, it was not unusual for a crop to be regarded as tithable for the first time only after commutation. At Gratwich, the rector's rent charge at £100.3.0 was over £28 more than the average for the seven years, the discrepancy being explained by the fact that the rector had never considered it worth his while to take any more than a nominal amount of small tithe. The rent charge included small tithes, properly assessed, for the first time⁽¹⁾. At Dilhorne, the vicar's rent charge in lieu of small tithes was raised from £40 to £70 "with the express concurrence of the Landowners", as assistant commissioner Matthew remarked. He continued:

'The Vicar has always been moderate with the parishioners & has never collected tithe on potatoe crops which he states would amount to £20 per annum.'⁽²⁾

At Draycott-in-the-Moors, the rector's rent charge was raised from the average value of £338 to £423, as tithe of clover was considered to be payable for the first time. As a 'new crop', of course, it was not included among the hay moduses which covered most of the parish. £42 was added to the rent charge for this new tithe⁽³⁾.

It is clear that what had been received during the years of average was not invariably considered to be crucial when assessing the rent charge. The landowners of Biddulph accepted the vicar's claim

1. P.R.O.: I.R.29/32/105 & I.R.18/9371. See also the letter of Samuel Ginders to Thomas Sudworth, 10 October 1837, explaining the rector's custom. S.R.O.: D240/M/D/VII/3.
2. P.R.O.: I.R.18/9335.
3. P.R.O.: I.R.18/9336.

that the annual valuations had been very low and that he had received less for tithe of calves than he was entitled to. He had also never collected the tithes of hay which from time to time had fallen due from lands abstracted from part of the 400 acres of moorland and waste in the parish. As a result of these accepted claims the rent charge payable to the vicar was increased from £48 to £90⁽¹⁾.

A large increase could also result from setting aside moduses previously accepted, or at least not openly questioned, by the tithe owners. At Wednesbury, the vicar had received an average of only £140 from his parish, and had received no milk tithes. The inhabitants produced a terrier at an award meeting held in March 1844 which mentioned a customary payment in lieu of tithe of milk. At subsequent meetings, however, this modus was not sustained and the rent charge was raised to £220⁽²⁾. At Gayton, various farm moduses were broken after enquiries into their validity. Impropriators and landowners both agreed to accept a valuation of the tithes, "the lands which had not paid to bear a rent charge equal to a moiety of the value of the tithes"⁽³⁾. The result was an award which raised the general level of the rent charge by 34.32%.

While a substantial minority of tithe values, therefore, were not improved by commutation, a majority were, and a few were increased very substantially. Given the fact that the commissioners were particularly concerned to defend the clerical interest, this was not

1. P.R.O.: I.R.18/9257.
 2. P.R.O.: I.R.18/9536.
 3. P.R.O.: I.R.18/9369.

altogether surprising. It is perhaps more interesting to note that tithe commutation could offer an opportunity for a redefinition of tithing obligations, including tithes never before collected. Those tithes which had been uncertain in incidence, low in value and hitherto indifferently collected were now usually included in the rent charge. Moreover, this overall increase in rent charge was achieved in Staffordshire with relatively little discontent, and sometimes with a surprisingly good grace. The impression is strengthened that landowners welcomed the new, open and clearly defined tithing obligations and were frequently prepared to accept increases in the total amount payable to be rid of the uncertainties of the old system when a new rector or a change in cultivation might lead to lengthy and expensive dispute. Admittedly, it was easier to agree to an increase in total rent charge rather than an increase on a particular farm - hence the frequent apportionment appeal meetings - but clearly, tithe commutation provided a net gain for the tithe owners.

V

The main burden of financing commutation also fell on the landowners. It is perfectly true, of course, that the commissioners intended the tithe owners to pay a proper share of the expenses of commutation, but the evidence suggests that this share was limited in general to activities before either the agreement or the assistant commissioner made his award. In most instances, the work of apportionment was the most expensive, and was invariably

carried out without contribution from the tithe owner. While the Tithe Act laid down general rules for the payment of costs for compulsory awards (clause 75)⁽¹⁾ there was no firm ruling on how voluntary commutations should be paid. A 'Welsh subscriber' wrote to the magazine 'Justice of the Peace', established to publicize the activities of the tithe commissioners and to answer queries, to complain that a tithe owner might be asked to meet all of the legal expenses involved in obtaining a voluntary agreement. He received the following reply:

'The tithe act is silent as to the payment of the expenses of making a voluntary agreement and they must form the subject of arrangement amongst the parties interested.

In ordinary cases, it seems fair that these expenses should be paid in equal moities by the tithe and landowners.'⁽²⁾

The tithe commissioners themselves appeared to approve this principle, although they were not prepared to set invariable precedents. In May 1838, they stated that as a general rule expenses should be paid by both parties respectively, although their assistants would charge all of the costs onto the offending party if there was any appearance of a "frivolous or vexatious" application arising from the Act⁽³⁾.

1. See above, p. 353.

2. Justice of the Peace, 3 November 1838. For other indications of how the commutation Act was to be interpreted see C Hodgson: Some Practical Directions and Suggestions concerning the Voluntary Commutation of Tithes, 1836 and G H Whalley: The Tithe Act and the Tithe Amendment Act, 1838, W Eagle: The Acts for the Commutation of Tithes in England and Wales, 3rd ed. 1840 and L Shelford: The Tithe Amendment Acts 1848.

3. P.Ps. (H.C.) 1837-8 Vol. XXVIII, pp. 33-44.

Records of tithe commutation expenses do not survive in great quantity; but the limited evidence from Staffordshire indicates that costs were being met much as the commissioners wished them to be. At Yoxall, a voluntary agreement to give the rector £294 as a rent charge was made in July 1838⁽¹⁾. The procedure was straightforward. Negotiations seem to have been conducted in perfect amity and no appeals were made against either award or apportionment. To clear the way for the agreement, James Cooke of Longdon, who was appointed valuer, was commissioned to ascertain the limits of the allotments out of Needwood Forest which were tithe free as a result of enclosure, and to compute the respective amounts of arable, meadow, pasture and woodland to be placed in the preamble to the award. For these services, he charged a total of £8.8.0 which the landowners and rector agreed to divide between them⁽²⁾. Mr T Hodson, who acted as solicitor, charged a total of £64.14.6½ for his work in organising and attending the Yoxall tithe meetings, drafting and engrossing the agreement. Of this, £26.4.6 was expended before 7 June 1839 when the agreement was finally completed. This sum was divided equally between land and tithe owners, the tithe owner arguing that all proceedings after this date were more properly concerned with the apportionment. This rather arbitrary division ensured that the landowners were saddled with payments totalling £27 for the three engrossed copies of the completed award. James Cooke charged a total of £177.4.0 for the apportionment, £58.17.0

1. P.R.O.: I.R.29/32/244.
 2. S.R.O.: D1851/4/31.

for drawing a general plan of the parish and apportioning the rent charge and £94.9.4 for apportioning the costs and making copies. The remainder was charged for making enlarged copies of the map to satisfy the requirements of the commissioners. The total formal costs of the award and apportionment of just over 3500 acres in Yoxall, therefore, amounted to £246.3.6 $\frac{1}{2}$ of which the tithe owner contributed £17.6.3 - only 7.03% of the total. At Hamstall Ridware, where the same apportioner officiated, Cooke's account totalled £122.19.10, and the solicitor charged £54.15.2 $\frac{1}{2}$. Of this the tithe owner was expected to meet only £16.2.7 of the solicitor's charge, and 8.83% of all costs⁽¹⁾. At Fulfen, near Lichfield, the same procedure was adopted. The expenses incurred by the solicitor, T Sherratt, between April 1837 and April 1838, when the agreement was signed, totalled £25.0.1 and were divided equally between land and tithe owners⁽²⁾. All subsequent expenses of solicitor and apportioner were paid by the eight proprietors of the land, but mostly by General William Dyott who owned 205 and the 239 tithable acres in the small district. The total expenses were £72.17.4. These charges were slightly higher than they would otherwise have been as Dyott wished Fulfen to be declared a separate district for the purposes of commutation and negotiations had to be begun with the commissioners to this end. The commissioners required plans to be made, showing Dyott's dominant interest before they consented to allow Fulfen to stand as a separate district.

1. S.R.O.: D1851/4/12.

2. S.R.O.: D661/8/1/5/2-3, and D1851/4/10.

Of course, expenses could be kept lower in districts where the parties involved trusted one another's motives sufficiently to permit one solicitor to act for both sides. In voluntary commutation, particularly, such trust does not appear to have been uncommon. In Newcastle under Lyme, however, where Rev Clement Leigh conducted negotiations through his own solicitors, T & J Ward, the expense involved does not appear to have been excessive. His bill from July 1839, when he held preliminary discussions with his agent on the value of his tithe, to October 1840, when final signatures to the agreement were obtained, totalled £42.8.11, in addition to which he paid half the cost of delineating the old enclosed land and conveying the information to a tithe commutation meeting⁽¹⁾. The landowners paid all apportionment costs as usual.

Although the records of commutation expenses are comparatively rare, it does seem clear that tithe commutation was a much cheaper process for landowners than enclosure. Mechanically, of course, it was simpler. There was no private Act of Parliament to be passed, and the parties were acting within an already defined legal framework. There were no expenses resulting from physical alterations to the landscape - ring fencing, road construction and the rest. There was, however, need for expert legal advice and more or less accurate maps and plans of each district. All salaries and expenses of the commissioners and their assistants were paid out of the public purse (Tithe Act clause 8) which relieved landowners of a considerable burden to which they had been subject during

1. S.R.O.: D593/T/10/12.

enclosure. The cost to the public of the tithe commission was heavy. By the end of 1848 the total expenditure of the commission was £485,419, the yearly cost from 1837 to 1848 averaging £40,493⁽¹⁾. In a return to Parliament in 1842 the total expenses of £50,464 in 1841 were analysed. It indicated that the assistant commissioners' salaries and expenses accounted for almost a half of this total, while upwards of £10,000 was devoted to clerks' salaries and copying fees. The three commissioners were paid £1,5000 per annum each, the secretary to the commission, J E Hovenden, £800 and the assistant secretary, E Bethune, £400⁽²⁾.

W E Tate has indicated the enormous variations of expense for landowners at enclosure from a few shillings to almost £4 per acre, with an average of well over £1 by the end of the eighteenth century⁽³⁾. Tithe commutation expenses vary within much narrower limits. The cost to the landowners of the Yoxall award and apportionment was approximately 1/4 per acre. In Hamstall Ridware, a much smaller parish for which similar procedures were necessary, it was 2/4. Apportioners seem always to have followed specific instructions given to them by the landowners and then to have apportioned costs strictly according to the amount of rent charge payable by each proprietor. At Oulton in Stone, the Duke of Sutherland was charged with £15.8.3 of the total apportionment

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1. P.Ps. (H.C.) 1849 Vol. XXI, p. 227. By comparison, the total published administrative costs of the Poor Law Commission between 1835 and 1848 was £564,191.
 2. P.Ps. (H.C.) 1842 Vol. XXVI, p. 775.
 3. W E Tate: The Cost of Parliamentary Enclosure in England, Econ. H.R. 2nd. ser. Vol. V, 1952-3, pp. 258-65.

expenses of £182.11.2. His proportion of the costs (8.44%) was almost identical to his proportion of the rent charge awarded (8.43%). Robert Fenton wrote to George Lewis in March 1844:

'His Grace seems to be charged with £15.8.3 as the Cost of an Apportionment extending over 215 Acres of his Land, and therefore the Cost does not amount to 1/6 per Acre which cannot be thought extravagant.'⁽¹⁾

Costs do not seem to have been excessive even in districts where commutation was difficult. In St Chad, Lichfield, where tithe ownership was extraordinarily complex and there had been lengthy disputes, the landowners' costs amounted to 3/7 per acre. The commissioner reported:

'These expenses are heavy but they appear to be justified by the amount of Work done. The Board is aware that the Commutation has extended over many years and has been entangled with many most intricate questions of law.'⁽²⁾

Compared with enclosure, therefore, although landowners still bore the brunt of administrative expenses, commutation was a relatively cheap procedure, and in Staffordshire no complaints seem to have been voiced on the grounds of expense alone.

By about 1850, tithe commutation had all but done away with tithing in kind, and had replaced the old, haphazard system by a new more scientifically calculated and altogether more efficient one. Grievance against tithe was virtually dead. The old system

1. S.R.O.: D593/K/7/3 (March).
2. P.R.O.: I.R.18/9303.

had many opponents, and the arguments in favour of change were irresistible. Tithe properly belonged to an earlier age - certainly to a pre-cash economy. It was hopelessly anachronistic in an increasingly urbanized, industrialized society; and, because it remained properly payable only in the countryside it was said that it discriminated against the farmer - the primary producer. It has been argued that it was scarcely more attractive to owners than to payers. It became increasingly difficult to collect as proprietors and tenants combined to evade their full dues. Recourse to the law might bring delay and outrageous expense without redress. Even if successful, the tithe owner, especially, if he were a cleric, had to weigh his possible revenue increase against the certain expense of litigation and the probable alienation of the community. Tithe could also encourage covetousness, meanness and deceit. It was strongly argued that it represented one of the chief hindrances to agricultural improvement. On a national scale, this view may properly be questioned; but it is undeniable that in certain areas where tithe was still taken either in kind or by punitively heavy compositions, it could dampen ideas of experiment and increased agricultural investment. Above all, however, tithe was a monstrous nuisance of which by the 1830's all men wished to be rid. The mechanism of tithe commutation, though hit on by accident and compromise, and though in practice favouring the tithe owners, proved remarkably successful in the circumstances. Few believed in 1836 that the institution of tithe, which had fathered so much litigation and discontent, could be so successfully and quickly reformed with

so little opposition from interested parties. That it was so was a testimony both to the efficiency of the tithe commissioners and their assistants, and an indication of men's desire to make a new and better system work. The old system with its intricacies, contradictions and complexities was rapidly and iconoclastically dismantled. It was replaced by a centrally organized and nationally controlled system which reflected the prevailing desire for bureaucratic efficiency to solve seemingly intractable problems. National solutions were sought for local sources of grievance, and they worked. For the first time in many parishes the landowner knew for certain what he must pay and the tithe owner what he might expect. Both could henceforward budget accordingly. A primitive system had given way to Victorian viability and respectability.



APPENDIX IIThe Distribution of Clerical Income in Staffordshire in 1832

Source: Replies to Articles of Enquiry on Ecclesiastical Revenue, Church Commissioners File: NB 20.

Preliminary Note: This Appendix does not lay claim to exhaustive accuracy. It is taken basically from one source, and relies on the accuracy of the incumbents themselves. Certain of them were not themselves using their account books, but were making what amounted to not very much more than informed guesses. The Appendix is included because it is hoped that it shows the general trend, and indicates very roughly the importance of Tithe in clerical incomes on the eve of Tithe Commutation.

<u>Living</u>	<u>Gross Income</u>	<u>From Tithes & Easter Offerings</u>	<u>From Glebe</u>	<u>Other Sources (Be- quests, Surplice Fees, Dividends etc)</u>	<u>% from Tithes</u>
Abbots Bromley (V)	£187.12.11	£70.1.8	£114.15.0	£8.8.11	37%
Adbaston (P.C.)	100. 0. 0	1.10.0	-	98.10.0	1.5
Aldridge (R)	1098.16.06	1048.16.6	50. 0.00	-	94
Alrewas (V)	347.19.44	257.16.0	70. 3.4	20. 0.0	74
Alstonfield (V)	126.10. 0	115. 0.0	6.10.0	5. 0.0	91
Alton (V)	170. 0. 0	150. (Tithes and Glebe let together)	20. 0.0		
Armitage (P.C.)	90. 0. 0	-	3. 0.0	87. 0.0	0
Ashley (R)	420. 0. 0	353. 0.0	65. 0.0	2. 0.0	84
Audley (V)	167.10. 0	70. 0.0	72. 7.6	25. 2.6	41
Barlaston (P.C.)	150. 0. 0	18. 0.0	130. 0.0	12. 0.0	12
Barton-u-Needw'd (P.C.)	135.10. 0	-	52.10.0	83.10.0	0
Baswich (V)	265.15. 9	141.18.5	53.15.0	70. 2.4	53
Betley (P.C.)	150. 0. 0	39.15.0	96. 0.0	14. 5.0	27
Biddulph (V)	122. 0.00	22. 0.0	56. 0.0	44. 0.0	18
Bilston: St. Leonard (P.C.)	635.13. 4	-	450. 0.0	184.6.8	0
Bilston: St. Mary (P.C.)	90. 0. 0	-	-	90.0.00	0
Blithfield (R)	468. 8. 0	390. 0.0	78. 8.0	-	83
Blore (R)	131.11. 0	40.10.10	90. 0.0	1. 0.2	31
Bloxwich (P.C.)	143.12. 2	-	18. 0.0	125.12.2	0
Blurton (P.C.)	189.12. 3	-	181. 3.11	8. 8.4	0
Blymhill with Weston-u- Lizard (livings held in plurality (R)	500. 0. 0	300. 0.0	200. 0.0	-	60
Bobbington (P.C.)	97. 0. 0	-	84.16.8	13. 3.4	0
Bradley (nr. Staff.) (P.C.)	80. 0. 0	-	50. 0.0	30. 0.0	0
Bradley in Moors (P.C.)	58. 1. 6	-	47. 0.0	11. 1.6	0
Bramshall (R)	95. 0. 0	50. 7.0	44.13.0	-	53
Brewood (V)	632.13. 4	565.12.2	34. 4.0	34. 4.0	89

Brierley Hill (P.C.)	£ 78. 0. 0	-	-	£78. 0. 0	0
Bucknall & Bagnall (R)	300. 0. 0	240. 0. 0	67. 0. 0	3. 0. 0	80
Burntwood (P.C.)	78. 0. 2	-	7. 0. 0	71. 0. 0	0
Burslem: St. John (R)	530. 0. 0	448. 0. 0	8. 0. 0	74. 0. 0	85
Burslem: St. Paul (P.C.)	123. 0. 0	-	-	123. 0. 0	0
Burton-on-Trent: Holy Trinity (P.C.)	260. 0. 0	-	-	260. 0. 0	0
Burton-on-Trent: St. Modwen (P.C.)	192.15. 8	50.19. 8	-	142. 4. 0	27
Bushbury (V)	159. 0. 0	45. 0. 0	114.0. 0	-	28
Butterton (P.C.)	91.18. 9	21.15. 9	-	70. 3. 0	24
Calton (P.C.)	86.10. 0	-	86.10. 0	-	0
Cannock (P.C.)	144.14. 8	-	35. 0. 0	109.14. 8	0
Castle Church (P.C.)	122.18. 1	-	92. 2. 1	30.16. 0	0
Cauldon (P.C.)	57.10. 0	50. 0. 0	-	7.10. 0	88
Caverswall (V)	233.16. 6	185. 5.10	37. 6. 8	11. 4. 0	79
Cheadle (R)	566. 2. 9	418. 0. 9	43.18. 0	103.18. 0	74
Chebsey (V)	229.10. 0	40.15. 0	186.16.0	1.19. 0	18
Checkley (R)	580. 0. 0	285. 0. 0	290. 0.0	5. 0. 0	49
Cheddleton (P.C.)	160. 0. 0	3.15. 0	65; 5. 0	91. 0. 0	3
Church Eaton (R)	1078. 7. 0	908. 7. 0	170.0. 0	-	83
Clifton Campville (R)	1345. 0. 0	1153. 0. 0	189.10.0	2.10. 0	90
Codsall (P.C.)	146.14. 3	-	15.18. 6	130.16. 9	-
Colton (R)	460. 0. 0	360. 0. 0	100.0. 0	-	78
Colwich (V)	523. 0. 0	469.10. 0	24. 0. 0	40. 0. 0	89
Coseley, Christ Ch. (P.C.)	143. 0. 0	-	-	143. 0. 0	0
Cotton (P.C.)	44. 0. 0	-	10. 0. 0	34. 0. 0	0
Croxden (P.C.)	92. 0. 0	-	36. 0. 0	56. 0. 0	0
Darlaston (R)	297.14. 4	214.19. 2	52. 4.10	31.10. 0	72
Dilhorne (V)	163.10. 0	41. 0. 0	120.0. 0	2.10. 0	27
Draycott-in-Moors (R)	500.13. 3	399. 4. 0	99. 0. 0	2.10. 0	80
Drayton Bassett (R)	244.12. 0	193. 0. 0	30. 0. 0	21.12. 0	79
Dunston & Coppenhall (P.C.)	85.15. 2	-	-	85.15. 2	0
Eccleshall (V)	170. 0. 0	20. 0. 0	45. 0. 0	105. 0. 0	12
Edingale (P.C.)	83. 8. 0	-	67. 0. 0	16. 8. 0	0
Elford (R)	300. 0. 0	13.12. 6	286.2. 6	0. 5. 0	5
Ellastone (V)	150. 0. 0	130. 0. 0	16. 0. 0	4. 0. 0	87
Ellenhall (P.C.)	92. 0. 8	-	86. 0. 0	6. 0. 8	0
Endon (P.C.)	160. 0. 0	-	124.0. 0	36. 0. 0	0
Enville (R)	1084. 4. 7	962.10. 7	116.14.0	5. 0. 0	90
Farewell (P.C.)	50. 0. 0	-	20. 0. 0	30. 0. 0	0
Fazeley (P.C.)	235. 0. 0	-	128.15.0	96. 5. 0	0
Forton (R)	524. 0. 0	450. 0. 0	70. 0. 0	4. 0. 0	86
Fradswell (P.C.)	60. 0. 0	55. 0. 0	-	5. 0. 0	92
Fulford (P.C.)	129. 4. 6	-	57.10. 0	71.10. 6	0
Gayton (P.C.)	50. 0. 0	-	40. 0. 0	10. 0. 0	0
Gnosall (P.C.)	114.11. 6	2. 1. 0	57.10. 0	54.11. 6	2
Gratwich (R)	125. 0. 0	79. 5. 0	46. 0. 0	0.15. 0	64
Grindon (R)	389. 0. 0	347. 8. 0	40. 0. 0	1.12. 0	89
Hamstall Ridware (R)	280. 0. 0	220. 0. 0	52. 0. 0	8. 0. 0	79
Hanbury (V)	455. 4. 8	325. 8. 5	117.2. 0	12. 9. 7	71
Hanford (P.C.)	140. 0. 0	73. 0. 0	39. 00 0	28. 0. 0	52

	£220. 0. 0	£ -	£190. 0. 0	£30. 0. 0	0
Hanley (P.C.)	(See entry under Clifton		Campville - livings assessed together)		
Harlaston (R)	440. 0. 0	208. 0. 0	132. 0. 0	-	47
Haughton (R)	319.18. 7	150. 0. 0	155. 4. 0	14.14. 7	47
High Offley (V)	70. 0. 0	-	-	70. 0. 0	0
Hilderstone (P.C.)	245. 0. 3	219. 0. 3	26. 0. 0	-	91
Himley (R)	60.18. 0	-	26. 8. 0	34.10. 0	0
Hints (P.C.)	105. 0. 0	2. 0. 0	80. 0. 0	5. 0. 0	2
Horton (P.C.)	380. 0. 0	377. 0. 0	-	3. 0. 0	99
Ilam (V)	569. 0. 0	510. 0. 0	54. 0. 0	5. 0. 0	90
Ingostre (R)	144.11.10	-	131. 6. 6	7. 5. 4	0
Ipstones (P.C.)	171.17. 3	48. 0. 0	67. 7. 3	56.10. 0	25
Keele (V)	80. 0. 0	45. 0. 0	20. 0. 0	15. 0. 0	31
Kings Bromley (V)	259. 0. 0	160. 0. 0	87. 0. 0	12. 0. 0	62
Kingsley (R)	68. 0. 0	-	50. 0. 0	18. 0. 0	0
Kingston (P.C.)					
Kingswinford (Holy Trinity) (R)	1130.15. 0	740. 0. 0	325.15. 0	65. 0. 0	65
Kingswinford (St. Mary) (P.C.)	400. 0. 0	-	400. 0. 0	-	0
Kinver (P.C.)	144. 0. 0	-	1. 0. 0	143.0. 0	0
Lapley (V)	140. 0. 0	84. 0. 0	29. 0. 0	27.0. 0	60
Leek (V)	218.14. 3	74. 3. 9	57.16. 0	87. 0. 3	34
Leigh (R)	811.10. 6	689. 7. 2	113. 0. 0	9. 2. 4	85
Lichfield: St. Chad (Stowe) (P.C.)	100. 0. 0	-	95. 0. 0	5. 0. 0	0
Lichfield: St. Mary (V)	500. 0. 0	470. 0. 0	-	30. 0. 0	94
Lichfield: St. Michael (P.C.)	137.15. 8	-	119. 0. 0	18.15. 8	0
Longdon (V)	200. 0. 0	137.18. 8	56. 0. 0	6. 2. 4	69
Longnor (P.C.)	102. 1. 0	-	49.10. 0	52.11. 0	0
Longton (P.C.)	154. 0. 0	-	72. 0. 0	72. 0. 0	0
Lower Gornal (P.C.)	140.10. 0	-	16. 0. 0	124.10.0	0
Madeley (V)	314.17. 1	289. 3. 1	40. 0. 0	35.14. 0	76
Maer (P.C.)	169. 0. 0	161.15. 0	3.12. 0	3.15. 0	96
Marchington (P.C.)	92. 4.10	-	80. 0. 0	12. 4.10	0
Marston (P.C.)	41.12. 8	-	25.10. 0	16. 2. 8	0
Mavesyn Ridware (R)	438.18. 2	409. 0. 0	27.18. 6	2. 0. 0	93
Mayfield (V)	200. 0. 0	50. 0. 0	150. 0. 0	-	25
Meerbrook (P.C.)	97.14. 1	-	59.10. 0	38. 4. 1	0
Hilwich (V)	102. 6. 6	94. 1. 6	1. 5. 0	7. 0. 0	92
Mucklestone (R)	900. 0. 0	865. 0. 0	30. 0. 0	5. 0. 0	96
Newborough (P.C.)	91.18. 0	-	47. 0. 0	44.18. 0	0
Needwood (Christ Ch.) (P.C.)	150. 0. 0	-	150. 0. 0	-	0
Newcastle-u-Lyme: (P.C.)					
St George New Church	108. 0. 0	-	98. 0. 0	10. 0. 0	0
Newcastle-u-Lyme: St. George (R)	380. 0. 0	158. 0. 0	44. 0. 0	88. 0. 0	42
Norbury (R)	531. 6. 8	419. 6. 8	112. 0. 0	-	79
Norton Canes (P.C.)	81. 7. 8	-	12. 0. 0	69. 7. 8	0
Norton-in-the-Moors (R)	446.17. 6	445.12.00	-	0. 5. 0	99
Oakamoor (P.C.)	45. 0. 0	-	-	45. 0. 0	0
Okeover (P.C.)	20. 0. 0	-	-	20. 0. 0	0

Onecote (P.C.)	£ 99. 3. 4	£ -	51. 2. 0	47.10. 4	0
Patshull (P.C.)	80. 0. 0	-	67.10. 0	12.10. 0	0
Pattingham (V)	200. 0. 0	191. 0. 0	4. 0. 0	5. 0. 0	91
Pelsall (P.C.)	99.19. 6	-	84. 0. 0	15.19. 6	0
Pipe Ridware (P.C.)	46. 0. 0	36. 0. 0	5. 0. 0	5. 0. 0	78
Penkridge (P.C.)	190.13. 3	1. 1. 0	122.1. 3	67.10. 0	1
Penn (V)	220. 0. 0	70. 0. 0	150.00.0	-	32
Quarnford (P.C.)	87.14. 6	-	30.00.0	40.14. 6	0
Rocester (P.C.)	69. 0. 0	-	40.00.0	29. 0. 0	0
Rolleston (R)	711. 0. 0	356. 8. 6	355.0. 0	-	50
Ronton (V)	93. 0. 0	-	86.15. 0	6.15. 0	0
Rugeley (V)	216.12. 2	70. 3. 2	114.0. 0	2. 9. 0	32
Rushall (V)	290. 0. 0	140. 0. 0	150.0. 0	-	48
Rushton (P.C.)	91. 0. 0	-	86. 0. 0	5. 0. 0	0
Sandon (V)	355.15. 0	345. 7. 6	9. 7. 6	1. 0. 0	97
Sedgley (V)	626.12. 0	521. 2. 0	25. 0. 0	80. 0. 0	83
Seighford (V)	119. 0. 0	43. 0. 0	72. 0. 0	24. 0. 0	36
Shareshill (P.C.)	115.13. 0	-	110.0. 0	5.13. 0	0
Sheen (P.C.)	71. 2. 6	0. 2. 6	70. 0. 0	1. 0. 0	0
Shenstone (V)	512. 0. 5	445. 5. 6	51. 0. 0	15.15. 0	87
Stafford: St. Chad (P.C.)	85. 6. 8	-	68. 0. 0	17. 6. 8	0
Stafford: St. Mary (R)	221.10. 0	-	-	221.10.0	0
Standon (R)	640. 0. 0	500. 0. 0	100.0. 0	40. 0.00	78
Stoke on Trent (R)	3000. 0. 0	1100. 0. 0	775.0. 0	1825. 0.0	37
Stone (P.C.)	200. 0. 0	100. 0. 0	90.0. 0	10. 0.0	50
Stonnall (P.C.)	92.14. 4	-	-	92.14.4	0
Stowe (P.C.)	58. 2. 0	-	38. 2. 0	20. 0.0	0
Stretton (P.C.)	101.19. 2	-	84. 7. 4	16.11.10	0
Talk O' the Hill (P.C.)	122. 7. 6	3.10. 0	92.17. 6	26. 0. 0	2
Tamworth (P.C.)	170. 0. 0	-	66. 0. 0	104.0. 0	0
Tatenhill (R)	1778.12. 9	1305.10. 0	433.15.0	39. 0. 0	74
Tettenhall Regis (P.C.)	197. 9. 4	-	149.0. 0	48. 9. 4	0
Thorpe Constantine (R)	389.10.11	189.10.11	200.0. 0	-	49
Tipton (P.C.)	401.13. 8	-	-	401.13.8	0
Tixall (R)	200. 0. 0	(Rector cannot say - profits leased)			0
Trentham (P.C.)	113. 3. 3	-	-	113. 3.3	0
Tutbury (V)	131. 1.10	21. 9. 4	97.18. 0	11.14. 6	16
Uttoxeter (V)	148. 7. 6	70. 0. 0	40. 0. 0	38. 7. 6	48
Walsall (V)	391.10. 0	137. 1. 0	148.19.0	105.0. 0	35
Walsall: St. Paul (P.C.)	50. 0. 0	-	-	50. 0. 0	0
Warslow (P.C.)	105.15. 0	-	94.10.0	11. 5. 0	0
Waterfall (P.C.)	65.13. 4	6.13. 4	51. 0.0	8. 0. 0	1
Wednesbury (V)	350. 0. 0	290. 0. 0	-	60. 0. 0	83
Wednesfield (P.C.)	113.15.10	-	-	113.15.10	0
Weeford (P.C.)	63.10. 0	-	14. 0. 0	49.10. 0	0
West Bromwich: All Saints (P.C.)	566.19. 4	-	124.16.8	422. 2. 8	0
West Bromwich: Christ. Ch. (P.C.)	330. 0. 0	-	100. 0.0	220. 0. 0	0
Weston-on-Trent (V)	96.12. 6	10. 0. 0	42.12.0	44. 0. 6	10
Wetton (P.C.)	90. 0. 0	-	90. 0. 0	-	0
Whitmore (R)	470. 0. 0	470. 0. 0	-	1. 0. 0	99

Whittington: St. Giles (P.C.)	£250. 0. 0	-	£79.16. 0	£170. 4. 0	0
Whittington: St. John (R)	1233. 8. 7	£1141. 0. 7	94. 8. 0	3. 0. 0	92
Wigginton (P.C.)	92.18.11	-	27. 9. 4	65. 9. 7	0
Willenhall: (P.C.)	300. 0. 0	-	240. 0. 0	60. 0. 0	0
Wolstanton (V)	296.17. 0	210.18. 3	60.19. 0	25. 0. 0	71
Wolstanton: New Chapel (P.C.)	81. 3. 0	-	60. 0. 0	21. 3. 0	0
Wolverhampton: St. George (P.C.)	170. 0. 0	-	-	170. 0. 0	0
Wolverhampton: St. John's (P.C.)	200. 0. 0	-	35. 0. 0	165. 0. 0	0
Wolverhampton: St. Peter (P.C.)	222.11. 0	-	55. 0. 0	167.11. 0	0
Womburne & Trysull (V)	650. 0. 0	205. 0. 0	430. 0. 0	15. 0. 0	32
Whichnor (P.C.)	71. 0. 0	-	54. 0. 0	17. 0. 0	0
Yoxall (R)	1524. 0. 0	275. 0. 0	215. 0. 0	34. 0. 0	54

CONCLUSIONS:

1. As may be seen from the following table, tithe revenue remained overwhelmingly important in the finance of Rectories. One of the two Rectories which took no tithes in 1832 - Elford - had been enclosed in 1766 and all of its tithes commuted for land. Enclosure apart, usually the only supplement to tithe revenue for Rectories was the money gained from renting out - or, more rarely, farming-substantial portions of glebe land.

	<u>£s of Revenue received from Tithes</u>			
	0-25	26-50	51-75	76-100
RECTORIES	2	7	9	23
VICARAGES	8	14	6	14
PERP. CURACIES	87	3	1	4

2. Vicarages and Curacies were usually less well endowed than Rectories, and their tithes, if any, were correspondingly smaller. Consequently, many of them were supplemented by grants of land or dividends either by their Patrons or, from 1703, by grants from Queen Anne's Bounty. (vide: Chapter II, pp.23-4). None the less, one third of the Vicarages depended on tithe for more than 75% of their income; and less than one fifth received less than a quarter of their income in tithes.

3. It should be noted that the number of Perpetual Curacies was greatly swollen at the beginning of the nineteenth century by new foundations in rapidly expanding industrial areas. Only rarely were tithes provided for these (vide: Chapter II, pp.24-5).

PULLOUT

PULLOUT

APPENDIX IVThe Extent and Amount of Sufferings in Staffordshire Friends 1690-1850Source: Books of Sufferings 1690-1850, Vols. VII-XLIII, Friends HouseNote:

1. All sufferings are equated with the cash value stated in the Sufferings Books. Although certain articles were taken in kind, their monetary value as assessed in the Book is given.

2. Only tithes and legal expenses are included. Church Rates and other dues are excluded.

<u>Year</u>	<u>Total No. of Sufferings</u>	<u>Number of Friends affected</u>	<u>Total Amount taken</u>
1690	9	9	£10.16. 0
1691	6	6	6.12. 0
1692	7	6	15.15. 0
1693	9	6	18. 2. 0
1694	11	9	16.11. 0
1695	7	7	13. 4. 4
1696	7	7	11.18. 0
1697	11	9	20.19. 0
1698	8	8	31. 7. 0
1699	11	10	24. 9. 0
Average for the Decade	<u>9</u>	<u>8</u>	<u>17. 0. 4</u>
1700	10	9	24.11. 0
1701	15	11	18.18. 4
1702	11	8	16. 0. 0
1703	11	9	16.10. 0
1704	7	7	21.11. 0
1705	11	9	19.17. 6
1706	11	9	21. 7. 7
1707	12	10	17. 8. 5
1708	15	13	24.11. 8
1709	16	13	33. 3. 6
Average for the Decade	<u>13</u>	<u>10</u>	<u>21. 7. 9</u>

1710	16	14	£23. 5. 5 $\frac{1}{2}$
1711	12	11	30.14. 0
1712	15	13	23.11. 0
1713	16	12	22. 0.10
1714	15	11	24.12. 0
1715	14	11	22. 1.10
1716	11	10	16.15. 6
1717	7	7	14. 7. 7
1718	14	11	21.18. 0
1719	22	17	40.11. 6

Average for
the Decade

141223.19. 9

1720	14	13	27. 5. 2
1721	13	10	36. 9. 9 $\frac{1}{2}$
1722	15	11	34. 3. 0
1723	15	11	15. 4. 0
1724	16	13	32.19. 0
1725	12	10	25.11. 6
1726	11	10	25.17. 8
1727	9	8	34. 2. 0
1728	16	15	33.16. 2
1729	16	12	36.10. 9

Average for
the Decade

141229. 3. 9

1730	13	11	26. 7. 6
1731	15	14	37. 0. 0
1732	14	10	24.12. 6
1733	16	9	19.15. 4
1734	7	5	15.12. 6
1735	9	7	19.16. 0
1736	10	7	26. 6. 6
1737	12	7	31. 8. 9
1738	10	6	16. 6. 6
1739	9	6	20.18. 2

Average for
the Decade

12823.16. 4 $\frac{1}{2}$

1740	7	5	£25.11. 0
1741	7	6	31. 4. 0
1742	6	5	19. 4. 2
1743	4	4	9. 5. 0
1744	11	5	35. 2. 2
1745	8	6	25. 2. 8
1746	8	6	23.18. 0
1747	10	7	24.10. 0
1748	8	5	24. 7. 0
1749	5	3	21.16. 0
Average for the Decade	<u>7</u>	<u>5</u>	<u>24. 0. 0</u>
1750	10	6	41.17. 6
1751	6	5	25.16. 8
1752	6	4	36.10. 0
1753	7	5	27.13. 0
1754	9	8	17.13. 0
1755	9	8	48. 7. 0
1756	9	7	39. 6. 0
1757	11	9	45. 5. 6
1758	9	9	47.17. 0
1759	9	7	35.19. 0
Average for the Decade	<u>9</u>	<u>7</u>	<u>36.12. 6</u>
1760	8	7	18.11. 0
1761	6	8	31. 6. 6
1762	8	6	40.11. 0
1763	10	9	59. 3. 3
1764	8	8	45. 4. 0
1765	6	7	32. 9. 0
1766	10	10	58. 0. 0
1767	8	10	41.18. 0
1768	10	11	67. 7. 0
1769	6	7	41.14. 0
Average for the Decade	<u>8</u>	<u>8</u>	<u>43.12. 5</u>

1770	8	10	£68.13. 9
1771	10	9	22.19. 6
1772	5	5	43. 0. 0
1773	3	3	30. 7. 6
1774	4	4	38. 0. 0
1775	7	6	46.18. 6
1776	8	5	50. 6. 0
1777	3	3	17.18. 0
1778	6	6	30.13. 0
1779	4	4	32. 0. 0

Average for
the Decade

	<u>6</u>	<u>6</u>	<u>38. 1. 6</u>
1780	2	1	18.17. 0
1781	6	5	59. 6.11
1782	7	6	43.13. 6
1783	7	7	61. 3. 2
1784	8	5	70.11. 0
1785	7	7	52. 8. 6
1786	9	7	75.19. 0
1787	7	6	49. 0. 0
1788	8	7	54.15. 6
1789	5	5	53. 1. 3

Average for
the Decade

	<u>7</u>	<u>6</u>	<u>53.17. 7</u>
1790	10	6	104. 1.10
1791	10	7	71. 7. 9
1792	7	6	77.17. 6
1793	5	5	46. 1. 6
1794	2	2	32.12. 0
1795	7	6	58.16. 2
1796	5	5	44. 9. 0
1797	5	5	54. 3. 0
1798	5	4	42.15. 0
1799	5	5	45.16. 2

Average for
the Decade

	<u>6</u>	<u>5</u>	<u>57.16. 1</u>
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1800	6	5	£74.15.10 $\frac{1}{2}$
1801	3	3	63.14. 3
1802	4	4	34.12. 0
1803	5	4	41.13. 0
1804	6	5	54.13. 0
1805	3	3	39.13. 0
1806	4	4	40. 9. 0
1807	4	4	42.19. 0
1808	3	3	37.10. 0
1809	2	2	16. 0. 0

Average for
the Decade

4444.11. 9

1810	-	-	-
1811	3	2	46. 6. 4
1812	2	2	26. 0. 0
1813	7	6	86. 6. 0
1814	4	4	86.13. 0
1815	5	5	181.12. 3
1816	4	4	27. 8. 0
1817	4	4	62.11. 0
1818	4	4	44.18. 0
1819	4	4	49. 5. 6

Average for
the Decade

4461. 2. 0

1820	6	5	131.14. 0
1821	2	2	50. 3. 9
1822	-	-	-
1823	4	4	96. 6. 6
1824	3	3	48.15. 2
1825	2	2	47. 1. 0
1826	2	2	29. 8.11
1827	1	1	29. 8.11
1828	2	2	40.12. 0
1829	3	3	52.11. 7

Average for
the Decade

3253.12. 0

1830	1	1	£44. 2. 9
1831	3	2	59. 5. 8
1832	2	2	56.12. 1
1833	7	6	125.10. 4
1834	4	3	63. 6. 0
1835	4	3	76.11. 6
1836	4	3	74.16. 0
1837	6	4	108.14. 0
1838	3	2	54. 7. 0
1839	2	1	76.10. 0

Average for the Decade	<u>4</u>	<u>3</u>	<u>66.19. 5</u>
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1840	6	4	89.15. 0
1841	7	5	116. 1. 0
1842	4	3	79. 5. 0
1843	4	3	76.15. 0
1844	4	3	75. 6. 9
1845	6	5	81.12. 6½
1846	4	3	80. 0. 3
1847	1	1	2.12. 0
1848	1	1	2. 6.10
1849	—	—	—
1850	1	1	35. 4.11
Average for the Decade	<u>4</u>	<u>3</u>	63.17.10

N.B. The Decennial average has been included, as any one year's set of figures tends to distort in that many tithe owners took their dues from Quakers at three or even four-yearly intervals, presumably to avoid the trouble of regular collection of small dues.

Also, Court costs might be particularly heavy in one year. For example, £149. 4. 9 of the £181.12. 3 sufferings in 1815 were the result of a Court case, in which William Masters of Seighford was compelled in the Court of Common Pleas to pay arrears of tithes from 1806 to 1810, together with the costs of the case.

APPENDIX VAnalysis of Staffordshire Friends. 1690-1850

<u>Years</u>	<u>Total Suffer- ings</u>	<u>Heard in Court but not im- prisoned</u>	<u>Impris- oned</u>	<u>By J.P. Warrant (from 1696)</u>	<u>% of Judicial Proceeding</u>
1690-1699	86	3	2	2	8.1
1700-1709	119	3	2	4	7.6
1710-1719	142	-	-	9	6.3
1720-1729	137	-	-	11	8.0
1730-1739	115	-	-	23	20.0
1740-1749	74	-	-	3	4.1
1750-1759	85	-	-	3	3.5
1760-1769	80	-	-	14	17.5
1770-1779	58	-	-	30	51.7
1780-1789	66	-	-	33	50.0
1790-1799	61	-	-	30	49.2
1800-1809	40	-	-	20	50.0
1810-1819	37	1	-	12	35.1
1820-1829	25	-	-	24	96.0
1830-1839	36	-	-	24	66.7
1840-1849	38	-	-	20	52.6
TOTAL	<u>1179</u>	<u>7</u>	<u>4</u>	<u>262</u>	23.0%

Source: Books of Sufferings, Vols. 7-43, Staffs. & Warwickshire & Worcestershire Sufferings. (Some Black Country Staffordshire areas are listed under the monthly and quarterly meetings held in these counties.)

APPENDIX VINumber of Friends imprisoned for non-payment of tithes 1690-1800Source: Epistle of the Yearly Meetings of Friends. 1681-1857. 2 vols

<u>Year</u>	<u>Prisoners</u>
1690	46
1691	80
1692	111
1693	(n.a.)
1694	132
1695	134
1696	97
1697	44
1698	34
1699	37
1700	40
1701	37
1702	37
1703	43
1704	31
1705	27
1706	33
1707	(n.a.)
1708	27
1709	16
1710	12
1711	12
1712	11
1713	8
1714	9
1715	9
1716	19
1717	20
1718	13
1719	16
1720	11
1721	5
1722	8
1723	2
1724	3
1725	1
1726	2
1727	1
1728	1
1729	-

1730	-
1731	1
1732	3
1733	2
1734	1
1735	1
1736	2
1737	3
1738	(n.a.)
1739	(n.a.)
1740	(n.a.)
1741	4
1742	4
1743	3
1744	-
1745	1
1746	(n.a.)
1747	1
1748	1
1749	2
1750	3
1751	4
1752	2
1753	(n.a.)
1754	3
1755	4
1756	-
1757	-
1758	-
1759	1
1760-73	-
1774	1
1775-94	-
1795	7
1796	7
1797	9
1798	-
1799	-
1800	-

APPENDIX VII A

Instructions in Acts of Enclosure in Staffordshire which commuted or exonerated tithe.

<u>Enclosure</u>	<u>Statute and Year</u>	<u>Instructions</u>
Elford	5 Geo. III cap. 82 1765	Allotments equal to $\frac{1}{8}$ of the common fields and meadows and an equivalent to the tithes of the old enclosures to be made to the rector.
Eomberford and Wigginton	10 Geo. III cap. 88 1770	Allotments of $\frac{2}{15}$ of the Common and waste and $\frac{1}{10}$ of the old enclosures.
Horninglow	11 Geo. III cap. 45 1771	$\frac{1}{10}$ of the Commons and waste to the impropriator.
Gailey Hay	13 Geo. III cap. 100 1773	$\frac{1}{7}$ of the Commons to the impropriator in lieu of tithe and manorial rights.
Kinver and Compton Common	13 Geo. III cap. 68 1773	$\frac{2}{19}$ of the Commons and wastes - but tithe of lamb and wool to remain payable.
Trysull and Seisdon	13 Geo. III cap. 103 1773	A satisfactory allotment to be made to the vicar. No amount stated.
Ashwood Hays	16 Geo. III cap. 33 1776	$\frac{2}{17}$ of the Commons and wastes - lamb and wool tithes remain payable.
Dunsley and Haffcot	19 Geo. III cap. 25 1779	$\frac{2}{19}$ of the Commons and wastes.
Edingale	31 Geo. III cap. 60 1791	$\frac{1}{6}$ of the tithable land to be given from open fields, and $\frac{1}{12}$ from the old enclosures. Small allotments then taken from these and given to the curate.

Swindon	33 Geo. III cap. 90 1793	A satisfactory allotment in lieu of the old enclosures to the impropiator. $\frac{1}{7}$ to the vicar in lieu of tithes of corn and grain from them, and $\frac{2}{15}$ for the same from part of the Commons. $\frac{2}{15}$ of part of the Commons to the impropiator in lieu of great tithes.
Stonefields	38 Geo. III cap. 78 1798	Allotments in compensation for tithe to impropiator and curate. No amount stated.
Pattingham and Patshull	39 Geo. III cap. 95 1799	Land to value of not less than £10 to be given to vicar in lieu of old enclosed land. Satisfactory allotment to be made to impropiator in lieu of tithes of Commons and wastes. Any landowner with less than 10 acres in open fields may make a monetary composition if he wishes.
Rowley Regis	39 Geo. III cap. 55 1799	Allotments to impropiator, but on small allotments owners may pay a sum of money.
Water Eaton	39 Geo. III cap. 73 1799	Allotments equal to $\frac{1}{14}$ of the Commons and wastes to be paid to impropiator.
Forebridge	40 Geo. III cap. 58 1800	A satisfactory allotment to be made in lieu of all tithes, but if tithe owners refuse to accept land then wastes exonerated from tithe payment for 7 years.
Stafford St Mary	40 Geo. III cap. 70 1800	Suitable allotments to be made in lieu of tithes from fields and wastes.
Needwood Forest	41 Geo. III cap. 56 1801	Allotments of one tenth of the value of Tutbury, Hanbury, Yoxall and Tatenhill to the rectors and vicars together with $\frac{1}{10}$ of the trees in the forest or the value of them.

West Bromwich	41 Geo. III cap. 14 1801	Suitable allotments to be made to the impropiator, but easter offerings to remain payable.
Alrevas	42 Geo. III cap. 29 1802	Suitable allotments in lieu of great and small tithes to the prebendary and vicar. Old enclosed land to remain tithable.
Anslov	42 Geo. III cap. 56 1802	Allotments amounting to $\frac{1}{8}$ of the Commons and waste to be laid out for the rector.
Basford	47 Geo. III cap. 20 1807	Suitable allotments in lieu of the value of the tithes of enclosed and open fields at the commissioners' discretion.
Newcastle-under-Lyme	56 Geo. III cap. 33 1816	Satisfactory provision to be made. (In fact a corn rent was agreed upon - See below Appendix 'B').
Salt and Enson	57 Geo. III cap. 50 1817	Suitable allotments to be made to the impropiators at the discretion of the enclosure commissioners.
Alstonfield	4 Wil. IV cap. 15 1834	Land to the value of £400 to be given to the impropiator, and to the value of £300 to the vicar.

APPENDIX VII B

Land and Corn Rents given in lieu of tithe in Staffordshire Enclosures:

1766-1845.

<u>Enclosure</u> (<i>'O'</i> denotes including some open field enclosure)	<u>Date of Award</u>	Amount of land given:	
		<u>To Clergy</u>	<u>To Impropropriators</u>
		A. r. p.	A. r. p.
Elford (O)	1766	169.1.23.	-
Comberford and Wigginton (O)	1772	-	333.0.0. *
Horninglow	1773	-	41.3.1.
Gailey Hay	1774	-	54.2.11.
Kinver and Compton Common	1774	-	114.0.34.
Trysull and Seisdon	1776	91.3.18.	-
Ashwood Hay	1777	156.3.30.	-
Dunsley and Haffcot	1779	-	42.1.8.
Edingale (O)	1794	132.2.25.	51.0.37.
Swindon	1796	233.2.32.	199.3.0.
Stonefields (O)	1801	9.3.12.	7.3.11.
West Bromwich (O)	1804	-	28.2.5.
Needwood Forest	1805	951.2.32.	-
Rowley Regis	1807	52.2.24.	18.0.27.
Stafford, St Mary (O)	1807	-	53.0.24.
Alrewas (O)	1810	123.2.18.	-
Basford (O)	1810	-	72.2.9.
Pattingham and Patshull (O)	1811	11.3.10	27.1.14.
Anslow	1813	19.2.17.	-
Water Eaton	1813	-	23.0.38.

Forebridge (0)	1815	-	0.1.6.
Alstonfield (0)	1839	484.2.2.	1269.1.2.
Salt and Enson	1845	-	36.1.13.
		<hr/>	<hr/>
		2437.1.3.	2372.2.0.

	<u>Corn rent</u>		
Needwood Forest	1805	£844.12.2½	-
Newcastle-under-Lyme	1816	130.10.3	-
		<hr/>	<hr/>
		£975. 2.5½	-

* An estimate: the exact acreage apportioned in lieu of tithe is not distinguished from the rest of the impropiators' - Lords Weymouth, Townsend and Stanford Wolferston - holdings. The estimate has been obtained by assuming that the Enclosure Act's directions of apportioning $\frac{2}{15}$ of the waste and $\frac{1}{10}$ of the Old Enclosures were carried out over the entire area.

Conclusions and Observations

1. Enclosure in Staffordshire was limited in this period. Between 1690 and 1850 an estimated 90,491 acres were enclosed by 101 Enclosure Acts and Awards. These covered only 12.07% of the County.
2. The majority of these Acts and Awards were concerned with Commons and Waste Land only. Only 25 of the Awards (24.75%) were concerned with open fields, and only 3 of these dealt with open fields exclusively.
3. The opportunities to exonerate land from tithe at enclosure were taken less readily in Staffordshire than in certain neighbouring counties, notably Warwickshire. Only 24 Awards (23.76%) were concerned with commuting tithe and of these several exonerated only part of the tithe - such as that arising from old enclosures - while leaving the remainder intact.
4. Awards covering open fields were more likely to contain provision for exoneration from tithes. 12 of the 25 Awards concerning open fields (48%) contained some such provision, only 12 of 76 other Awards (15.7%) did so.
5. 4809 a.3r.3p. were set aside for tithe owners in lieu of tithe in 24 Awards. 50.67% went to the clergy and 49.33% to lay impropriators. This represented only 5.32% of the total area enclosed during the period and 0.64% of the total acreage of the County.
6. In addition 2 Awards made provision for a corn rent to be paid in lieu

of tithe. These raised clerical incomes by a yearly rate of £975.2.5 $\frac{1}{2}$.

APPENDIX VIII: The Progress of Tithe Commutation in England and Wales

	<u>Voluntary Agreements Confirmed</u>	<u>Compulsory Awards Confirmed</u>	<u>Apportionments Made</u>
1836-38	2362	6	224
1839	1990	172	933
1840	1156	382	1475
1841	668	470	1715
1842	407	583	1347
1843	281	559	1186
1844	121	646	1034
1845	88	555	741
1846	45	502	602
1847	4	454	598
1848	14	380	525
1849	9	230	408
1850	2	218	353
1851	—	106	254
	<hr/>	<hr/>	<hr/>
	7147	5263	11,395

Source: Yearly Report of the Tithe Commissioners, 1839-1852 in
Parl. Papers (H.C.)

In addition, by 1851 619 altered apportionments - generally
correcting errors in the originals - had been confirmed, and a
further 190 awaited confirmation. 13,160 separate mergers of land

with tithe had been noted.

Abstract:

1. Overwhelmingly, the primary function of the tithe commissioners had been discharged by 1848. In their 1849 report (P.P.s (H.C.) Vol. XXII p.549-50) they noted that of 12,275 tithe districts for which returns had to be made, 11,479 (93.52%) were complete. In the great majority of the remainder, there were special problems associated with the district, such as those in which nearly all tithes had been extinguished at enclosure, or where the validity of certain moduses was still in doubt. It should be noted that in a small proportion of cases no apportionment was necessary because all tithes had been extinguished e.g. by merger.
2. Commutation by voluntary composition was achieved in the main surprisingly quickly. By the end of 1840, the tithe commissioners had confirmed 77.07% of the voluntary awards. By 1844, 97.73% had been confirmed.
3. Confirmation of compulsory awards proceeded at a slower pace, and in general, as might be expected, compulsory proceedings were more lengthy and complicated. 93.24% of the compulsory awards were completed by the last yearly report which covered the period up to the end of 1851. Of these 70.25% were confirmed during the seven years 1840-1846. The remainder were confirmed during the remainder of the 1850's and 35 of the 5644 awards were still in progress in 1860.

APPENDIX IX: Staffordshire Tithe Awards, 1837-1855

NOTE: The awards are listed in alphabetical order by parish. Tithe districts within the parish are inset. Extra-parochial places are treated as separate parishes.

If tithes are apportioned to a living then the tithe is always shown under the 'Incumbent' column even though the incumbency may be more or less permanently annexed to a Corporation or institution, as in the case of Tatenhill. Reference should again be made to the notes.

When an award has been altered, the altered award (if completed by 1852) is given in the table and reference is made in the notes to the original award. This, together with some minor differences on geographical location of parishes, accounts for the slight disparity between the totals given below and the totals prepared by the Tithe Commissioners in 1887. (Parliamentary Papers 1887 Vol. LXIV, pp. 239 et seq).

Tithe districts have also been included in the list when no award was necessary because all tithes were merged by the owners of the lands. Exclusion would have underestimated the extent of the merger of tithes in land.

PULLOUT

PULLOUT

Abstract:

In many cases above the acreages given were either estimates of the land to be covered by commutation or were taken from old surveys which may have been inaccurate. The acreage total which follow are contemporary estimates. They are included in order to show the approximate extent of tithe commutation in Staffordshire. The total area of Staffordshire is taken from V.C.H. (Staffs.) Vol. I (1908) p.620.

Acreage of Staffordshire:	749,602
Acreage covered by Tithe Awards (including mergers)	649,763 (86.68% of total)
Mergers total	141,680 (21.80% of acreage covered)

Rent Charge Apportioned:

	£	s.	d.	% of total
To Rectors	22,739.	13.	6	31.37
Vicars and Curates	10,832.	12.	2½	14.95
Impropriators	19,859.	8.	10½	27.40
Appropriators	19,050.	6.	5½	26.28
	<hr/>			
	£ 72,482.	1.	0½	

Thus of tithe actually apportioned in Staffordshire, 46.32% went to the holders of livings and 53.68% to impropriators and appropriators.

This table does not of course take note of mergers of tithe in land. Mergers were effected in no fewer than 79 of the 272 tithe districts and in 22 of these districts all the tithes were merged with the land by the respective owners. Tithes were eventually apportioned on 508,083 acres at an average of approximately 2s.10d.

per acre. If it is assumed that the same average would have applied to tithes which were merged then impropiators would have an extra £20,071. 3. 8 in rent charge. The adjusted table would then read:

	£	s. d.	<u>% of total</u>
To Rectors	22,739.13.	6	24.57
Vicars and Curates	10,832.12.	2½	11.70
Impropriators	39,930.12.	6½	43.14
Appropriators	19,050.	6. 5½	20.58
	<hr/>		
	£92,553.	4. 8½	

On these projections, therefore, the proportion of tithe going to incumbents drops from 46.32% to 36.27%.

Mergers are, therefore, a very important item which have tended to be forgotten in making calculations and generalisations about tithe commutation.

SELECT BIBLIOGRAPHYI Manuscript sources:1. Public Record Office

Exchequer bills, depositions and answers. (E.112)

Exchequer decrees and orders (E.126/7)

Depositions taken before Barons of the exchequer or commission (E.133/4)

Chancery bills & depositions (C.11-13)

Tithe Files (I.R.18)

Tithe Maps and Apportionments (I.R.29 and 30)

Home Office Papers: Letters to the Duke of Portland (H.O.42)

2. British Museum

Auckland Papers (Add. Mss. 34440)

Hardwicke Papers (Add. Mss. 36138)

Leigh & Ashenhurst Papers (Add. Mss. 36663)

Peel Papers (Add. Mss. 40408)

Miscellaneous papers (Add. Mss. 33052)

3. Staffordshire County Record Office

I have made an extensive study of the papers relating to tithe in estate collections and deposited parish documents. It would be unnecessarily wasteful of space to list every document from every collection. The most useful collections and deposits have been:

Aquelate Papers (D.1788)

Bagot Papers (D.1721). Estate accounts and correspondence relating to Abbots Bromley.

Bentley executorship papers (D.908)

Bill Papers (D.554) especially accounts and correspondence relating to tithe in Alton.

Blagg & Son, solicitors' papers (D.239). Legal correspondence relating to disputes particularly in Cheadle and Stoke on Trent.

Dyott Papers (D.661). Material relating to tithe in and around Lichfield.

Elde of Seighford Collection (D.798)

Giffard Mss. (D.590)

Hatherton Mss. (D.260)

Hinckley Birch solicitors' papers (D.1851) especially useful for proceedings relating to tithe at enclosure and negotiations for tithe commutation.

Stafford Papers: (D.240)

Sutherland Collection: (D.593). A vast deposit. The most useful papers are the estate accounts relating to the Sutherland estates in Staffordshire, the correspondence on estate matters between George Lewis and James Loch (D.593/K), the legal papers (D.593/E) and the papers of the Sutherland solicitor in Staffordshire, Robert Fenton (D.593/T).

Vernon Mss: (D.1790)

Yoxall parish documents (D.1)

Staffordshire enclosure awards: Q/RDc

4. William Salt Library, Stafford

This library possesses an unrivalled collection of pamphlets and manuscript material on Staffordshire history. The following mss. collections have been the subject of special study:

Parker-Jervis papers (49/44): Solicitors' papers

Hand Morgan collection (H.M.)

Leigh Tithe Book: (93-97/31)

Vicarial account book of Baswich (S.Ms. 429/iii)

5. Lichfield Joint Record Office

This office contains most of the mss. material relating to the diocese of Lichfield & Coventry (as it remained until 1836). They include papers relating to the administration and jurisdiction of the Bishop and the Dean & Chapter.

Archdeacon's visitation records (A/V/1)

Diocesan Court Papers (B/C/5)

Diocesan Court Books (B/C/2)

Dean & Chapter Muniments (DC): Much of this material is as yet uncatalogued, and some remains inaccessible.

Glebe Terriers (B/V/6). Existing as a series from 1612.

Registrar's Letter Books (B/A/19). From 1828. They give much useful information on tithing problems immediately before the passing of the Tithe Commutation Act.

6. University of Keele

Sneyd Family papers. These papers are still in the process of cataloguing, but they do shed some light on tithe disputes in Keele and Wolstanton. See particularly S.95 and S.97.

7. Church Commissioners, Millbank, London SW1

Church Commissioners file (NB series). This contains the replies to the 1832 commission of enquiry on the value and emoluments of livings.

8. Birmingham Reference Library

Jewell Baillie Mss.: See particularly Nos. 272 and 278 for tithe disputes in Aston (N. Warwicks).

9. Friends House, Euston Road, London NW1

The major repository for Quaker history. It contains important mss. and a superb collection of pamphlets and tracts relating to Friends and tithes.

Book of Cases (B.C.)

Book of Sufferings (B.S.). Mostly seventeenth and early eighteenth century examples of sufferings sustained by Friends for their 'faithful testimony' against tithes and other rates.

Minutes of the Meeting for Sufferings (M.M.S.). These span the whole period under study but are particularly useful for the period 1690-1730.

Minutes of the Yearly Meeting (M.Y.M.). Printed in 2 vols.

II Printed sources

1. Parliamentary material

The debates on tithe and related subjects for the period have been studied in the available reports, which become truly systematic and reliable only after about 1803.

Parliamentary Debates

Parliamentary Register**Hansard's Parliamentary History (to 1803)****Cobbett's Parliamentary History of England (to 1812)****Hansard's Parliamentary Debates: 1st series 1803-20****2nd series 1820-30****3rd series 1830-50****House of Commons Journals****House of Lords Journals**

Parliamentary Papers (Commons and Lords). This huge series contains bills, reports, accounts and miscellaneous papers from 1713. The most interesting and statistical material dates from the early nineteenth century. See particularly:

Papers relating to Queen Anne's Bounty (H.C.) 1814-5, Vol. XII**Papers relating to the clergy and non-residence (H.C.) 1808, 1810, 1812 and 1817.****Report from select committee on the virtues of leasing tithes (H.C.) 1816, Vol. IV.****Account of augmented livings (H.C.) 1817, Vol. XV.****Papers respecting tithe causes (H.C.) 1817, Vol. XVI.****Select Committees on Agricultural Distress (H.C.) 1820, (Vol. II); 1821, (IX); 1822 (V); 1833 (V); 1836 (VIII). Evidence and reports.****Return of parishes in England and Wales where tithe commutation has been authorized by Act of Parliament (H.C.) 1831-2, Vol. XXX.****Report on the jurisdiction of Consistory Courts (H.C.) 1831-2, Vol. XXIV.****Revenues of episcopal sees (H.C.) 1835, Vol. XXII.****Return of enclosure Acts in which tithes were commuted (H.C.) 1836, Vol. XLIV.****Reports of the Tithe Commissioners to the Home Secretary (H.C.) Yearly from 1837-1852.****Account of expenditure by the tithe commissioners in 1841 (H.C.) 1842, Vol. XXVI****Abstract of the amount paid from public taxes for the tithe commission, 1837-1848. (H.C.) 1849, Vol. XXX****2. Newspapers and Periodicals****Annals of Agriculture, 1784-1808**

Annual Register, 1758-1850
 Aris's Birmingham Gazette, 1764-1850
 Black Dwarf, 1817-1823
 The British Magazine & Monthly Register of Religious and
 Ecclesiastical Information, 1832-1849
 The Church of England Bulwark and Clergyman's Protector, 1828
 The Church Examiner and Ecclesiastical Record 1832
 Cobbett's Annual Political Register, 1802-36
 Cobbett's Genuine Two-Penny Trash, 1830-2
 Edinburgh Review, 1802-50
 The Farmer's Magazine (Edinburgh) 1800-25
 The Gentleman's Magazine, 1736-1850
 The Justice of the Peace, 1837-50
 Lichfield Mercury, 1818
 The Leeds Mercury, 1827-30
 The Man, 1833-4
 Monthly Chronicle & British Register, 1796-1826
 The Pamphleteer, 1813-28
 Poor Man's Guardian, 1831-5
 Proceedings of the Bath and West of England Agricultural Society:
 Letters and Papers on Agriculture, 1783-1816
 The Quarterly Review, 1809-50
 Staffordshire Advertiser, 1795-1850
 The Times, 1785-1850
 The Westminster Review, 1824-46
 Voice of the People, 1831

3. Books and Pamphlets, published before 1850

(Note: Place of publication is London, unless otherwise stated)

Anon: An Appeal to the Common Sense, Common Honesty and Common
 Piety of the Laity in respect to the Payment of Tythe, 1744
 (Goldsmith's Library, Univ. of London)

Anon: An Answer to the Remarks made upon the Bill now depending
 in Parliament concerning Tythes, 1731 (Friends House Tract)

Anon: A Brief Account of the Persecutions of People called

- Quakers, 1736 (F.H. Tract)
- Anon: The Claims of the Clergy to Tithes and Other Church Revenues Examined, 1830
- Anon: An Examination of a Book lately Printed by the Quakers ... so far as the Clergy of the Diocese of Lichfield and Coventry are Concerned in it, 1739 (F.H. Tracts)
- Anon: Observations on a General Commutation of Tithes for Land or a Corn Rent, 1782 (G.L.)
- Anon: The Sacred and Indefeasible Rights of the Clergy ... Vindicated, 1817
- W. Arnall: Animadversions on a Reverend Prelate's Remarks upon a Bill Now Depending ... to prevent Suits for Tithes, 1731
- L. Bagot: Charge to the Clergy of the Diocese of Norwich by the Bishop, Norwich, 1784
- T. Bateman: A Treatise on Agistment Tithe, 2nd. ed. 1778
- T. Bateman: Appendix to the Treatise on Agistment Tithe, 1779
- Bibliotheca Topographica Britannica, Vol. IV, 1790
- The Extraordinary Black Book, 1831
- W. Blackstone: Commentaries on the Laws of England, 4 Vols., Oxford, 1765-69
- W. Bohun: A Tithing Table, 1732
- R. Burn: Ecclesiastical Law, 4 vols. orig. publ. 1763-5, 8th ed. 1824.
- E. Cardwell: Synodalia, 2 vols., Oxford, 1842
- W. Cobbett: A History of the Protestant Reformation in England and Ireland, 2 vols., 1829
- W. Cobbett: Rural Rides, 1830, 2 vols., Everyman ed. 1912.
- W. Cowper: 'The Yearly Distress or Tithing Time at Stock in Essex' in (ed.) H. S. Milford: The Poetical Works of William Cowper, 4th ed., 1934
- M. Cove: An Essay on the Revenues of the Church of England, 2nd. ed., 1797
- T. Cunningham: A New Treatise on Laws Concerning Tithes, 1765
- R. Davis: A General View of the Agriculture of the County of Oxford, 1794
- S. Degge: The Parson's Counsellor with the Law of Tithes, 1676
- J. Dymond: The Church and the Clergy ..., 1832
- F. K. Eagle & E. Younge: A Collection of the Reports of the Cases, the Statutes and Ecclesiastical Laws Relating to Tithes, 4 vols.,

1826

- W. Eagle: The Acts for the Commutation of Tithes in England and Wales, 3rd. ed., 1840
- T. Ellwood: The Foundation of Tythes Shaken, 2nd. ed. 1720
- J. S. Fry: A Concise History of Tithes, Bristol, 1819
- J. Gough: A History of the People Called Quakers, 4 vols., Dublin,
- M. Grant: A Defence of Tithes, 1788
- H. Gwillim: A Collection of Acts and Records ... Respecting Tithes, 4 vols., 1801
- C. Hodgson: Some Practical Directions and Suggestions Concerning the Voluntary Commutation of Tithes, 1836
- H. Homer: Essay upon the Nature and Method of Ascertaining the Specifick Shares of Proprietors upon the Inclosure of the Common Fields, Oxford, 1766
- C. Leslie: Essay Concerning the Divine Right of Tythes, 1700
- R. Lowe: A General View of the Agriculture of the County of Nottingham, 1794
- W. Marshall: Rural Economy of the Midland Counties, 2nd. ed., 1796
- W. Marshall: On the Appropriation and Inclosure of Commonable and Intermixed Lands, 1801
- J. Middleton: A General View of the Agriculture of the County of Middlesex, 1798
- J. Mitford: A Treatise on Pleadings in Suits in the Court of Chancery, 5th. ed. 1847
- W. Mitford: Considerations on the Opinion stated by the Lords of the Council on the Corn Laws, 1791
- R. Oastler: Vicarial Tithes Halifax, Halifax, 1827
- W. Paley: The Principles of Moral and Political Philosophy, 2nd. ed. 1786
- A. Pearson: The Great Case of Tythes, 1657
- W. Pitt: A General View of the Agriculture of the County of Stafford, 2nd. ed. 1813
- F. Plowden: The Principles and Law of Tithing, 1806
- J. Rayner: Cases at Large Concerning Tithes, 3 vols., 1783
- J. Selden: The Historie of Tithes, 1618
- L. Shelford: The Act for the Commutation of Tithes in England and Wales, 1836
- L. Shelford: The Tithe Amendment Acts, 1848
- R. Smalbroke: Charge to the Clergy of the Diocese of St. Davids, 1725, (W.S.L.)

- R. Smalbroke: Charge to the Clergy of the Diocese of Lichfield and Coventry by the Bishop, 1732 (W.S.L.)
- A. Smith: The Wealth of Nations, 1776, 2 vols., Everyman ed. 1910
- T. Thompson: Tithes Indefensible, 3rd. ed. York, 1796
- B. N. Turner: An Argumentative Appeal to the Right Reverend the Bishops and the Body of the Parochial Clergy, 1788
- D. Walker: A General View of the Agriculture of the County of Hertfordshire, 1795
- R. Wake: The Priest's Complaint: A Discourse on the Heinous Crime of Tithe Stealing, 1703
- R. Watson: Anecdotes of the Life of Richard Watson, 1817
- G. H. Whalley: The Tithe Act and the Tithe Amendment Act with explanatory Notes, 1838
- H. Wood: A Collection of Decrees by the Court of the Exchequer in Tithe Causes ... 4 vols., 1798-9
- A. Young: A General View of the Agriculture of the County of Oxford, 2nd. ed. 1813
- A. Young: Political Arithmetic, 1774
- E. Younge: A Collection of the Reports of the Cases, the Statutes and Ecclesiastical Laws relating to Tithes, 1826
- E. Younge & J. Jervis: Reports of Cases argued and determined in the Court of the Exchequer, 3 vols., 1828-30

4. Books, Dissertations and articles published since 1850
(Note: Place of publication of books is London, unless otherwise stated)

- N. Adams: 'The Judicial Conflict over Tithes', E.H.R., Vol. 52, 1937, pp. 1-22
- J. C. Atkinson: Forty Years in a Moorland Parish, 2nd. ed. 1891
- M. R. Austin: The Church of England in Derbyshire, unpub. PhD thesis, Univ. of London, 1969
- D. M. Barratt: 'Ecclesiastical Terriers of Warwickshire Parishes', Publications of the Dugdale Society, Vol. 22, Oxford, 1955
- D. M. Barratt: 'Short Guide to Historical Records: 13: Glebe Terriers', History, Vol. 51, 1966, pp. 35-38
- W. K. Riland-Bedford: Three Hundred Years of a Family Living, Birmingham, 1889
- G. F. A. Best: Temporal Pillars, Cambridge, 1964

- A. Braithwaite: 'Early Tithe Prosecutions: Friends as Outlaws', Journal of the Friends Historical Society, Vol. 49, No. 3, 1960, pp. 146-55
- E. R. C. Brinkworth: 'Archdeacons Court Records', Transactions of the Royal Historical Society, Vol. 25, 1943, pp. 93-119
- J. Caird: English Agriculture in 1850-51, 1852
- O. Chadwick: The Victorian Church, 2 vols., 1966-70
- J. D. Chambers & G. E. Mingay: The Agricultural Revolution, 1750-1880, 1966
- (ed.) O. F. Christie: The Diary of Revd. William Jones, 1777-1821, 1929
- H. Coombs and A. N. Bax: The Journal of a Somerset Rector, 1930
- G. Constable: Monastic Tithes from their Origins to the Twelfth Century, Cambridge, 1964
- E. A. Cox & B. R. Dittmer: 'The Tithe Files of the Mid-Nineteenth Century', Agric. H. R., Vol. 13, 1965, pp. 1-16
- E. L. Cutts: Parish Priests and their People, 1898
- C. Driver: Tory Radical: The Life of Richard Oastler, New York, 1946
- M. Dutt: The Agricultural Labourers' Revolt of 1830 in Kent, Surrey and Sussex, Unpub. PhD thesis, Univ. of London, 1966
- W. Easterby: The History of the Law of Tithe in England, Cambridge, 1888
- J. F. Ede : A History of Wednesbury, Wednesbury, 1962
- G. A. Endacott: The Progress of Enclosures in Dorset, unpub. B. Litt. thesis, Univ. of Oxford, 1938
- Lord Ernle: English Farming Past and Present, 6th. ed., 1961
- E. J. Evans: 'Our Faithful Testimony': The Society of Friends and Tithe Payments 1690-1730, Journal of the Friends Historical Society, Vol. 52, No. 2, 1969, pp. 106-121
- E. J. Evans: 'Tithing Customs and Disputes: The Evidence of Glebe Terriers', Agric. H. R., Vol. 18, 1970, pp. 17-35
- N. Gash: The Rural Unrest in 1830, Unpub. B. Litt. thesis, Univ. of Oxford, 1934
- M. D. George: Catalogue of Political and Personal Satires in the British Museum, Vols. 5-11, 1935-54
- M. D. George: English Political Caricature, 2 vols., Oxford, 1959
- E. C. K. Gonner: Common Land and Enclosure, 1912 (2nd. ed. 1966)
- J. T. Gould: Men of Aldridge, Bloxwich, 1957
- H. Grove: Alienated Tithes, 1896

- E. Halevy: A History of the English People in the Nineteenth Century, Vols. I-III, 1961 ed.
- J. L. & B. Hammond: The Village Labourer, 1911
- V. Harrison: The Board of Agriculture 1793-1822, unpub. M. A. thesis, Univ. of London, 1955
- A. Tindal-Hart: Country Counting House, 1962
- J. E. C. Hill: Economic Problems of the Church, Oxford, 1956
- E. J. Hobsbawm & G. F. E. Rudé: Captain Swing, 1969
- W. G. Hoskins: The Midland Peasant, 1957
- (ed.) W. E. Houghton: The Wellesley Index to Victorian Periodicals, Toronto, 1966
- N. C. Hunt: Two Early Political Associations, Oxford, 1961
- E. Isichei: Victorian Quakers, Oxford, 1970
- E. L. Jones: Seasons and Prices, 1964
- H. Lansdell: The Sacred Tenth - studies in Tithe Giving, 1906
- V. M. Lavrovsky: 'Tithe Commutation as a Factor in the Gradual Decrease of Landownership by the English Peasantry', Econ. H.R. 1st. ser. Vol. IV, 1933, pp. 273-289
- J. Latimer: Annals of Bristol in the Eighteenth Century From 1893
- (ed.) C. D. Linnell: 'The Diary of Benjamin Rogers, Rector of Carlton, 1720-1771: Publications of the Bedfordshire Historical Record Society, Vol. 30, 1950
- A. G. Little: 'Personal Tithes', E.H.R., Vol. 60, 1945, pp. 67-88
- J. M. Martin: 'The Cost of Parliamentary Enclosure in Warwickshire', University of Birmingham Historical Journal, Vol. IX, 1964, pp. 146-56
- J. M. Martin: 'The Parliamentary Enclosure Movement & Rural Society in Warwickshire', Agric. H.R., Vol. 15, 1967, pp. 19-39
- J. M. Martin: 'Social and Economic Trends in the Rural West Midlands, 1785-1825', Unpub. M. Comm. thesis, Univ. of Birmingham, 1960
- J. M. Martin: 'Warwickshire and the Parliamentary Enclosure Movement', Unpub. PhD thesis, Univ. of Birmingham, 1965
- D. M. McClatchey: Oxfordshire Clergy 1777-1869, Oxford, 1960
- P. W. Millard: The Law of Tithe Rentcharge, 2nd. ed. 1926
- G. E. Mingay: English Landed Society in the Eighteenth Century, 1963
- G. E. Mingay: Enclosure and the Small Farmer in the Age of the Industrial Revolution (Studies in Economic History) 1968

- P. O'Donoghue: 'Causes of the Opposition to Tithes 1830-38', Studia Hibernica, Vol. 5, 1965, pp. 7-28
- R. Pelham: 'The 1801 Crop Returns for Staffordshire in their Geographical Setting', Staffordshire Historical Collections, 1950-51
- R. J. Phillimore: The Ecclesiastical Law of the Church of England, 2 vols., 1873-6
- R. Plant: A History of Cheadle, Leek, 1881
- H. Prince: 'The Tithe Surveys of the Mid Nineteenth Century', Agric. H. R., Vol. 7, 1959, pp. 14-26
- F. Redfern: A History of Uttoxeter, 2nd. ed. Hanley, 1886
- M. A. Rice: Abbots Bromley, Shrewsbury, 1939
- A. Savidge: The Foundation and Early Years of Queen Anne's Bounty, 1955
- (ed.) R. Sedgwick: Memoirs of Lord Hervey on the Reign of George II, 1952
- Early Stanhope: Life of William Pitt, 4 vols., 1961
- R. W. Sturgess: The Response of Agriculture in Staffordshire to the Price Changes of the Nineteenth Century, Unpub. PhD thesis, Univ. of Manchester, 1965
- J. F. Sutton: Nottingham Date Book, 1852
- N. Sykes: Church and State in England in the Eighteenth Century, 1934
- N. Sykes: Edmund Gibson, Bishop of London, 1669-1748, 1926
- W. E. Tate: 'The Cost of Parliamentary Enclosure in England', Econ. H.R., 2nd. ser. Vol. 5, 1952/3, pp. 258-65
- W. E. Tate: The English Village Community and the Enclosure Movement, 1967
- W. E. Tate: The Parish Chest, Cambridge, 1960
- H. Thomas: 'The Enclosure of Open Fields and Commons in Staffordshire', Staffs. Hist. Collections, 1931
- E. P. Thompson: The Making of the English Working Class, 1963
- F. M. L. Thompson: English Landed Society in the Nineteenth Century, 1963
- R. T. Vann: 'Quakerism and the Social Structure in the Inter-regnum', Past and Present, No. 43, 1969, pp. 71-91
- J. A. Venn: Foundations of Agricultural Economics, Cambridge, 1933
- Victoria County History of Staffordshire, Vols, I, II, III, IV, V, VIII, 1908-1970
- D. Wallace: The Tithe War, 1934

W. R. Ward: The English Land Tax in the Eighteenth Century,
Oxford, 1953

W. R. Ward: 'The Tithe Question in England in the Early Nineteenth
Century', Journal of Ecclesiastical History, Vol. 16, 1965,
pp. 67-81

S. & B. Webb: English Local Government, 8 vols., 1906-29

White's Gazetteer of Staffordshire, 1851

D. Williams: The Rebecca Riots, Cardiff, 1955

Abstract:

In many cases above the acreages given were either estimates of the land to be covered by commutation or were taken from old surveys which may have been inaccurate. The acreage total which follow are contemporary estimates. They are included in order to show the approximate extent of tithe commutation in Staffordshire. The total area of Staffordshire is taken from V.C.H. (Staffs.) Vol. I (1908) p.620.

Acreage of Staffordshire:	749,602
Acreage covered by Tithe Awards (including mergers)	649,763 (86.68% of total)
Mergers total	141,680 (21.80% of acreage covered)

Rent Charge Apportioned:

	£	s.	d.	% of total
To Rectors	22,739.	13.	6	31.37
Vicars and Curates	10,832.	12.	2½	14.95
Impropriators	19,859.	8.	10½	27.40
Appropriators	19,050.	6.	5½	26.28
	<hr/>			
	£ 72,482.	1.	0½	

Thus of tithe actually apportioned in Staffordshire, 46.32% went to the holders of livings and 53.68% to impropriators and appropriators.

This table does not of course take note of mergers of tithe in land. Mergers were effected in no fewer than 79 of the 272 tithe districts and in 22 of these districts all the tithes were merged with the land by the respective owners. Tithes were eventually apportioned on 508,083 acres at an average of approximately 2s.10d.